

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>				1. CONTRACT ID CODE	
2. AMENDMENT/MODIFICATION NO. AM0001		3. EFFECTIVE DATE 28-Jul-2000	4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO.(
6. ISSUED BY US ARMY ENGINEERING & SUPPORT CENTER CEHNC-CT 4820 UNIVERSITY SQUARE  HUNTSVILLE, AL 35816		CODE DACA87	7. ADMINISTERED BY (If other than item 6) CODE		
		<b>See Item 6</b>			
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code)			X	9A. AMENDMENT OF SOLICI DACA87-00-R-0001	
			X	9B. DATED (SEE ITEM 11) 11-Jul-2000	
				10A. MOD. OF CONTRACT/O	
				10B. DATED (SEE ITEM 13)	
CODE		FACILITY CODE			
<b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</b>					
<input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of <input type="checkbox"/> is extended, <input checked="" type="checkbox"/> is not extended  Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the document; (b) By acknowledging receipt of this amendment on each copy of the offer or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. ACCOUNTING AND APPROPRIATION DATA (If required)					
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.					
A.THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.					
B.THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).					
C.THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:					
D.OTHER (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)  Request for Proposal (RFP) DACA87-00-R-0001, Construction of Tactical and Tactical Support Facilities for the X-Band Radar at Eareckson Station, Shemya, AK for the National Missile Defense(NMD) Program.  SEE CONTINUATION SHEET FOR DETAILED CHANGES					
<u>Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and</u>					
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
15B. CONTRACTOR/OFFEROR  _____ (Signature of person authorized to sign)		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA  BY _____ (Signature of Contracting Officer)		16C. I



SECTION SF 30 BLOCK 14 CONTINUATION PAGE

- A. This amendment is issued to incorporate answers to questions received through 27 July 2000; notwithstanding what is shown in block 13a of the SF 1442, we are establishing the closing date for the cost proposal (Volume II) as 07 September 2000; provide 90% Plans and Specifications to include drawings; and to make changes through-out the solicitation. See attachment no. 1 for a complete set of questions and answers.
- B. The entire solicitation dated 11 July 2000 is revised and replaced herein in its entirety. Vertical lines have been placed in the margins to indicate where changes have been made, however there is no responsibility on the part of the Government that these are the only changes. (Note, this changed document is changed for purposes of ease in replacing the changed pages of the document.) To facilitate posting of these changes, please replace old document with this revised one. Remember, detailed information pertaining to this amendment has been marked by vertical lines.
- C. Offerors must acknowledge receipt of this amendment prior to the hour and date specified for receipt of proposals. Offerors are reminded to submit the attached Standard Form 1442, Solicitation, Offer, and Award (AM0001) acknowledging all amendments in Item 18.
- D. All other terms and conditions of this solicitation remain unchanged.

<b>SOLICITATION, OFFER, AND AWARD</b> <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO. DACA87-00-R-0001	2. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 11-Jul-2000	PAGE OF PAGE 1 OF 209
<b>IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.</b>				
4. CONTRACT NO.		5. REQUISITION/PURCHASE REQUEST NO.		6. PROJECT NO.
7. ISSUED BY US ARMY ENGINEERING & SUPPORT CENTER CEHNC-CT 4820 University Square  HUNTSVILLE, AL 35816		CODE DACA87	8. ADDRESS OFFER TO <i>(If Other Than Item 7)</i> CODE  <b>See Item 7</b>	
9. FOR INFORMATION CALL:	A. NAME WANDA H HAMPTON		B. TELEPHONE NO. <i>(Include area code)</i> <i>(NO COLLECT)</i> 256-895-1168	
<b>SOLICITATION</b>				
<b>NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".</b>				
10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS <i>(Title, identifying no., date):</i>  <div style="text-align: center; margin-top: 50px;"> <b>SEE PAGE '3' FOR DESCRIPTION</b>    <b>This project has a DX-C2 Defense Priority Rating.</b> </div>				
11. The Contractor shall begin performance within _____ calendar days and complete it within _____ calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory, <input type="checkbox"/> negotiable. <i>(See 0800,para1.0 _____.)</i>				
12 A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? <i>(If "YES," indicate within how many calendar days after award in Item 12B.)</i> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				12B. CALENDAR DAYS  10
13. ADDITIONAL SOLICITATION REQUIREMENTS: A. Sealed offers in original and <u>7</u> copies to perform the work required are due at the place specified in Item 8 by <u>14:00:00</u> <i>(hour)</i> local time <u>8/28/00</u> <i>(date)</i> . If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due. B. An offer guarantee <input checked="" type="checkbox"/> is, <input type="checkbox"/> is not required. C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference. D. Offers providing less than <u>210</u> calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.				

<b>SOLICITATION, OFFER, AND AWARD (Continued)</b> <i>(Construction, Alteration, or Repair)</i>										
<b>OFFER (Must be fully completed by offeror)</b>										
14. NAME AND ADDRESS OF OFFEROR <i>(Include ZIP Code)</i>						15. TELEPHONE NO. <i>(Include area code)</i>				
						16. REMITTANCE ADDRESS <i>(Include only if different than Item 14)</i>				
						<b>See Item 14</b>				
CODE			FACILITY CODE							
17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within _____ calendar days after the date offers are due. <i>(Insert any number equal to or greater than the minimum requirements stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)</i>										
AMOUNTS		SEE SCHEDULE OF PRICES								
18. The offeror agrees to furnish any required performance and payment bonds.										
<b>19. ACKNOWLEDGMENT OF AMENDMENTS</b> <i>(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)</i>										
AMENDMENT NO.										
DATE										
20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER <i>(Type or print)</i>						20B. SIGNATURE			20C. OFFER DATE	
<b>AWARD (To be completed by Government)</b>										
21. ITEMS ACCEPTED: <div style="font-size: 1.5em; font-weight: bold; margin-top: 10px;">SEE SCHEDULE</div>										
22. AMOUNT			23. ACCOUNTING AND APPROPRIATION DATA							
24. SUBMIT INVOICES TO ADDRESS SHOWN IN <i>(4 copies unless otherwise specified)</i>					<b>ITEM</b>	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input type="checkbox"/> 10 U.S.C. 2304(c) <input type="checkbox"/> 41 U.S.C. 253(c)				
26. ADMINISTERED BY			CODE					27. PAYMENT WILL BE MADE BY		
								CODE		
CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE										
<input type="checkbox"/> 28. NEGOTIATED AGREEMENT <i>(Contractor is required to sign this document and return. _____ copies to issuing office.)</i> Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications or incorporated by reference in or attached to this contract.						<input type="checkbox"/> 29. AWARD <i>(Contractor is not required to sign this document.)</i> Your offer on this solicitation, is hereby accepted as to the items listed. This summarizes the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.				
30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN <i>(Type or print)</i>						31A. NAME OF CONTRACTING OFFICER <i>(Type or print)</i>				
30B. SIGNATURE			30C. DATE			31B. UNITED STATES OF AMERICA			31C. AWARD D.	
			5			BY				

Continuation of SF 1442, Block 10.

CONSTRUCTION OF TACTICAL AND TACTICAL SUPPORT FACILITIES FOR THE NATIONAL MISSILE DEFENSE (NMD) PROGRAM. The U.S. Army Corps of Engineers, Huntsville Center, is seeking sources to construct tactical and tactical support facilities for the X-band Radar in support of the NMD Program. This effort will be accomplished under a Cost Plus Award Fee contract. The X-band Radar complex will be located at Eareckson Air Station, Shemya, AK. The Government's objective is to partner with the offeror representing the best value to the Government. Volumes I and III of the proposal are due on 28 August 2000 at 1400 hours local time. The date for submission of Volume II will be due 07 September 2000. ~~established by amendment at a later date.~~

See also FAR 52.232-18, AVAILABILITY OF FUNDS.

A Pre-proposal Conference will be held at the Corps of Engineers District in Anchorage, AK, 21 July 2000. For more information on this conference, see FAR 52.242-4152 at Section 00700.

An organized site visit has been scheduled for 17-20 July 2000. For additional information on the site visit, see FAR 52.236-27 ALT I at Section 00100.

Partial Notice to Proceed, Full Notice to Proceed and a contract award based on this solicitation is subject to Presidential decision to proceed with this preliminary phase of the NMD Program.

The late proposal provision at FAR 52.215-1 applies to both phases of the proposal process.

Volume II shall contain the Representations & Certifications(Section 00800).

**SUMMARY OF WORK**  
**National Missile Defense**  
**Section 00010**

**1.0 GENERAL.** The United States of America has initiated a program to deploy a National Missile Defense (NMD) System consisting of a fixed land-based missile defense system capable of intercepting and destroying a limited inter-continental ballistic missile attack. Development and fielding of NMD is a multi-phased, dynamic effort, lead and managed by the Ballistic Missile Defense Organization's (BMDO) Joint Program Office (JPO) and its lead systems integrator (LSI), the Boeing Company. One major element of this system is the X-band Radar (XBR). Raytheon, under contract to the LSI, is developing the XBR, a phased-array radar positioned on a circular foundation enclosed in an air-supported radome.

There are other candidate sites in Alaska and North Dakota currently under consideration for constructing NMD Systems; however, this solicitation is for the construction of XBR facilities at Eareckson Air Station, Shemya Island, AK. The Contractor shall deliver a complete and usable XBR facility to include the antenna mount foundation and supporting radome structure and a radar control and support facility for the LSI to install tactical equipment. When the tactical equipment is in place the radar facility will be complete.

**1.1 Program Milestones.** The Beneficial Occupancy Dates (BOD) for critical elements of the project are listed below:

<b>BASELINE SCHEDULE</b>	<b>Projected NTP</b>	<b>Projected Final BOD</b>
<b>XBR Site Facilities</b>		
Antenna Mount Foundation	4/2/01	4/1/02 *
Radome Support	4/2/01	5/1/03 *
Control & Support Facility	4/2/01	12/1/03
Power Plant	4/2/01	12/1/03
Fuel Tank	10/1/01	12/1/03
Water Facilities	10/1/01	12/1/03
Personnel Housing & Administrative Space (Bldg. 600)	10/1/01	12/1/03
Personnel Housing (Bldg. 598)	12/1/03	1/3/05

\* Incremental BOD. Final BOD is 12/1/03

The BOD is defined as the date following construction on which beneficial occupancy is granted to the user of the facility. After contract award, subject to the bonding requirements of FAR 28.102-1(c) and insurance requirements of FAR 52.228-5, the Government plans to issue a partial Notice to Proceed (NTP) for project planning and procurement of items necessary to support the 04/02/01 construction start at the site. A partial NTP will not be issued until after the

Presidential decision is made to proceed with this preliminary phase of the NMD program. A full Notice to Proceed will be issued before work can begin on 04/02/01. All radar facilities, except for the personnel housing in Building 598, shall be completed by 12/01/03.

**1.2 Incremental BOD Requirements.** The following facilities must be completed at BOD:

**1.2.1 Antenna Mount (AM) Foundation:** The Contractor will:

1.2.1.1 Prepare the foundation to allow occupancy at the beginning of and during the installation of the antenna mount.

1.2.1.2 Prepare the antenna mount assembly and container storage areas and build a temporary access road as specified in the Contract.

1.2.1.3 Build access roads from the barge pier to the runway storage area and from the storage area to the XBR facility as defined in the contract. The roads shall be capable of handling an 18-wheel truck carrying a 60,000-lb. load on a 60-ft. extendable flat-bed trailer. Road clearance shall permit passage of 16-ft. extra wide by 14-ft. tall loads.

1.2.1.4 Build access roads from hangar No. 4 (Building 701) to the XBR facility as defined in the contract. The roads shall be capable of handling a multi-wheel truck transporting a 150,000-lb. load on a flat-bed trailer.

1.2.1.5 Prepare the foundation electrical-ground grid including interface provisions for the AM as shown in the contract. This requirement includes the installation and testing of a ground system.

1.2.1.6 Provide temporary power at the XBR antenna mount assembly building, assembly staging area, and top of foundation as defined below:

SERVICE	VOLTAGE	CURRENT	PHASE
1	480/277V	200A	3
1	120/208V	200A	3

~~1.2.1.7~~ ~~1.2.1.7~~ Install foundations for the antenna mount ~~assembly building~~ as described below.

#### ~~1.2.1.7.1~~ Shemya Antenna Mount Facility Deep Foundation

Natural surface elevation of the Antenna Mount Foundation (AMF) site is approximately 229 feet at the eastern edge and gently slopes to elevation 225 at the western edge of the facility. The surface of the site is covered by a 3 to 10 foot thick mantle of organic peat. Soil beneath the peat consists predominantly of silty sands (SM)/mineral soils that transition gradationally to the underlying andesitic tuff bedrock. Due to this transitional change, the precise location of top of rock (TOR) is not always clear. However, average location of TOR beneath the site is estimated at el. 202, dipping



slightly to the west. Significant water losses occurred during bedrock drilling, but no groundwater was observed.

Three major rock units have been encountered beneath the AMF. The first, an andesite tuff-breccia is very soft, friable and fractured. This unit varies from 25 to more than 50 feet in thickness. In some places a sandstone unit approximately 8 feet thick underlies the andesite unit. This SS unit is also very friable and fractured. Beneath the sandstone unit lies a Hornblende Plagioclase Porphyry. Like the other rock strata, this unit has zones that are highly fractured. However, there are also zones of reasonably competent rock, and the overall compressive strength is greater than the overlying units. This rock unit was encountered at a depth of 72 feet at the east side of the AMF, but was not encountered on the west side of the AMF at a depth of 82 feet where the boring was terminated.

The government has decided to require a deep foundation beneath the AMF, consisting of piles socketed into the Hornblende Plagioclase Porphyry. Pile design has not yet been performed; however, it will likely include the following:

- Up to 64 vertical and battered piles will be required. Vertical piles will have a bottom tip of pile located at approximately elevation 100. Battered piles, if required, will likely be placed 3 vertical/1horizontal, but will not be as deep as the vertical piles.
- Piles will be placed in pre-drilled holes installed by the contractor, and then grouted in-place. The pre-drilled holes are anticipated to be 24" nominal diameter. Due to the fractured bedrock, each pile boring is expected to take, on average, up to 200% more than its calculated volume of cement grout.
- Piles may consist of either pre-stressed cast concrete, cast-in-place reinforced concrete, H-beam, or other design which has yet to be determined.

The Contractor shall provide all materials, equipment, personnel, shipping and transportation, and other actions necessary to install the pile foundation for the AMF at Shemya.

#### 2-1.2.1.7.2 Erection Sequence of the AMF Including Temporary Shoring

The construction of the Antenna Mount Foundation will involve careful coordination for safe and proper erection considering the unique base isolation system that is to be constructed as part of the AMF. The isolation system will consist of large vertical spring units or groups of spring units together with viscous dampening devices and large friction pendulum devices.

Temporary shoring will be required to support the AMF during construction until such time that the base isolation system and horizontal diaphragm can be installed. The shoring design has not yet been performed. However, it will likely be of steel truss construction designed for the purpose of supporting gravity, seismic, and wind loading from the formwork and finished concrete of that portion of the AMF above the base isolation system. Pending delivery of the isolation equipment, the temporary shoring may be required to support the design loads of that part of the AMF above the isolation system. Therefore, the shoring will be required to support an approximate weight of 9500 kips. A probable construction sequence will be as follows:

- A deep foundation utilizing piles will be placed. Pile caps will then be placed at the design elevation of the bottom of the foundation mat. Compacted backfill will be graded to the bottom of the foundation mat elevation providing a subgrade on which to start construction of the AMF. The base foundation slab will then be placed on the finished grade and rigidly connected at the pile caps. All cantilevered columns and bearing supports for the base isolation system will be constructed and allowed proper curing time before proceeding.

- Temporary shoring will then be erected. The temporary shoring must be fully constructed and properly braced before placing any formwork. The shoring may include temporary structural steel members placed in locations of future isolation dampers and fuse/positioners. Construction may then proceed with the shoring in place starting from the first floor slab and proceeding to the Drive Platform and Control System (DPCS) track wall as a minimum.
- Installation of the isolation system may begin after the shoring is in place. The vertical isolation spring units will be pretensioned with an approximate 6 in. offset from operational displacement. The friction pendulum system (FPS) base isolators will then be mounted on spring units. The tension on the spring units will then be adjusted to the design displacement so that the FPS units bear on the bottom of the first floor slab. Temporary structural members that are in place as part of the shoring will then be replaced with isolation damping devices and fuse/positioners. The horizontal diaphragm will then be constructed to provide stability necessary to remove the remaining shoring.

Construction of the AMF may then proceed to completion. Coordination of placement of the radome foundation wall will be evaluated considering proper access during construction of the AMF. The AMF track must be leveled to a great degree of accuracy. This will most likely be accomplished with the fuse/positioner devices after construction of the Radar. The Contractor shall provide all materials, equipment, personnel, shipping and transportation, and other actions necessary to install the temporary shoring for the AMF at Shemya.

~~defined in the contract.~~

## **1.2.2 Radome Support.** At BOD, the following must be completed.

1.2.2.1 The Radome Pressurization System Equipment Room in the Control and Support Systems Facility, including the inlet air-duct interface and the outlet pressure duct into the AM foundation, in a condition suitable for occupancy.

1.2.2.2. A completed and tested power source for the pressurization system, including the diesel generator back-up power system for the radome pressurization unit as defined below:

1.2.2.2.1 Radome Pressurization System Power. The Radome Pressurization System will be fed from redundant feeders--a dedicated emergency generator and two automatic transfer switches (ATS) as shown on Drawing E-1 attached at the end of Section 00800 (see 208/120V Feeders F6 and F7). During operation, if one of the feeders is lost, ATS-1 will automatically switch the load over to the second feeder. ATS-1 will be equipped with a 3-second time delay to make sure that the load transfer happens after all the motors have come to a complete stop. If the second feeder loses power, ATS-2 will start the generator and transfer the load to the emergency generator. ATS-2 will be equipped with a 5-second time delay to make sure the generator does not start if only one feeder is out of service. The Radome Pressurization System will be automatically restored to the normal operating condition after normal power is restored. The emergency 150 kW generator will [SFM1]deliver 208/120 volt  $\pm$  5%, 60 Hz  $\pm$  3% directly to the Radome Pressurization Control Panel as identified on Drawing E-2 attached at the end of Section 00800.

In conjunction with Radome Pressurization System, the Contractor will provide:

a. An anemometer tower and associated conduit into the High-altitude Electromagnetic Pulse (HEMP) entry vault as defined below:

Two 60-foot-tall towers are required for mounting wind-speed indicators for the Radome Pressurization System. The towers can be guyed or free standing and will require access by a man lift. The two wind-speed indicators are redundant. The towers must be located in a clear, unobstructed area, a minimum of 225 feet from the Radome foundation tower wall. A pipe, 1 ¼-inch in length is required at the top of the towers for mounting the wind-speed indicators. A 1 ½ -inch underground duct is required from the base of the tower into the Radome pressurization equipment area in the HEMP-shielded Control and Support Systems Facility.

b. Air-lock vestibules with Government-furnished XBR doors installed.

**1.2.4 Supporting Activities after Partial NTP.** Besides providing administrative facilities after a partial NTP issued on, or about, 12/12/00, the effort after the partial NTP shall include the Contractor's planning necessary to execute the Tactical and Tactical Support Facility construction for Eareckson AS, beginning on 4/2/01. These activities may include some, or all, of the following:

1.2.4.1 Partial NTP actions occurring prior to Final Contract NTP to begin construction efforts

1.2.4.1.1 Contractor Initial Actions

- a. Finalize Contract Management Procedures
- b. Develop organization
- c. Reassign/hire NMD staff
- d. Develop work breakdown structure
- e. Establish Earned-value Management System
  - (1) Schedule
  - (2) Cost
  - (3) Quality
  - (4) Safety
  - (5) Reports
- f. Partnering
  - (1) US Army Corps of Engineers
  - (2) NMD Team
- g. Detailed site visit
- h. Integrated Baseline Review

1.2.4.2 Develop Detailed Basis of Cost

- a. Analyze the final design (not available at award)
- b. Define specific activities for all the work
- c. Establish the schedule baseline
  - (1) Determine specific actions to meet XBR AM foundation milestone incremental BOD
  - (2) Determine long lead-time items (not all inclusive)
    - (a) Procure to meet schedule constraints

- (b) Barges
- (c) Aggregate
- (d) Seismic Isolators and Dampers
- (e) Form work
- (f) Switchgear
- (g) Generators
- (h) Others
- d. Establish the cost baseline

#### 1.2.4.3 Establish Office on Site

- a. Housing
- b. Coordinate with POA Staff
- c. Coordinate with 611<sup>th</sup> CES and BOS Contractor

**1.3 Funding.** The estimated magnitude of this project is expected to range from \$100,000,000 to \$250,000,000. Funding is not presently available for contract award, but will be provided incrementally. The first increment is expected in November 2000. For planning purposes, assume the following incremental funding profile:

FY01	\$54.6M
FY02	\$66.2M
FY03	Remaining Funds

Cost and schedule control are key determinants to the success of this effort.

The cost associated with Government support items such as the provision of vehicles for use by the Government specified in Section 01015 paragraph 1.10, "CONTRACTOR-FURNISHED VEHICLE" and the provision of housing and meals for Government personnel specified in Section 01501 paragraph 1.8 "CAMP FACILITIES" are not included in the funding specified in Section 00010 paragraph 1.3. The cost for these Government support items will be reimbursed from other fund sources. All costs (including overhead, shipping, fuel, maintenance costs, etc.) associated with the Government support shall be identified and separately listed in the offeror's cost proposal.

**2.0 DESCRIPTION OF WORK.** The purpose of the contract is to construct facilities and infrastructure to house and support the NMD mission and operational elements at Eareckson Air Station, AK, in support of the NMD mission. All work shall be performed in accordance with the requirements of this contract. One XBR will be constructed. However, if either a change in configuration occurs (such as an addition of facilities for the In-Flight Interceptor Communications System (IFICS), or communications systems/facilities) or if an expansion of the construction effort is required (within the overall context of construction of NMD facilities and infrastructure supporting the NMD mission), the effort may be performed under this contract.

A contract award and notice to proceed based on this solicitation is subject to a Presidential decision to proceed with this preliminary phase of the NMD program.

**2.1. Installation of Operational Elements.** The Government will furnish the air-lock vestibule doors for the XBR Control and Support Facility and the mounting ring for the radome (both being developed by LSI) to the construction contractor for installation under this contract. If, as

the program evolves, additional support in this area is required, it may be separately negotiated and performed under this contract.

**2.2 Facility Completion and Acceptance.** Government acceptance of these facilities will be based on the Contractor's successful completion (as determined by the Government) of all contractual requirements.

**2.3 Government-furnished Equipment/Materials.** The Government will provide the following items to the Contractor:

2.3.1 Design documents for the selected site.

2.3.2 Maps showing site plans with areas reserved for the Lead System Integrator.

2.3.3 Air-lock vestibule doors for the XBR Control and Support Facility (replacement value \$85,000).

2.3.4 Templates for installation of the Antenna Mount track anchor bolts and mounting ring for the radome (replacement value \$175,000).

2.3.5 Facility Furnishings. If the Contracting Officer (CO) deems it in the best interest of the Government, the Contractor shall provide facility furnishings via a change modification to the contract.

**3.0 PROGRAM INTERFACES.** The U. S. Army Corps of Engineers (USACE) and its construction contractor are responsible for completing the NMD facility. The cognizant USACE Contracting Officer will provide all direction to the Contractor. However, other organizations will closely coordinate and interface with USACE and its construction contractor. Some of these organizations and their roles include:

**3.1 NMD Joint Program Office.** The BMD organization that manages and oversees the development and fielding of the NMD System. The NMD Program Executive Office (PEO) will be represented onsite by the Site Activation Commander (SAC) or his designated representative. The SAC is, or he may appoint, the site commander, who controls and coordinates all on-site activity and provides program direction and guidance to USACE.

**3.2 U.S. Army Corps of Engineers.** The USACE, led by the Engineering Support Center, Huntsville (USAESCH), is responsible for design and construction of facilities and infrastructure to house and support NMD operational elements. The design and contracting effort are being performed by USAESCH. After award, contracting authority and construction management will be turned over to the Alaska District, U.S. Army Corps of Engineers, but overall NMD program management authority will remain with HQ USACE supported by USAESCH.

**3.3 Black and Veatch (B&V).** A-E retained by USAESCH to develop the facility and infrastructure design for the NMD system. B&V will also provide design-related support to the Government during construction.

**3.4 Lead System Integrator .** Boeing heads the LSI contract team in all phases of the NMD program. The LSI is responsible to NMD JPO for fielding a functional, affordable, reliable missile defense system. Further, the LSI team is responsible for XBR development and for installing critical portions of operational elements into the facilities.

**3.5 Commissioning.** To ensure fully functioning facility systems that meet building mission and quality requirements, the Government requires a commissioning process for the XBR. Commissioning is a proactive, systematic, and rigorous process of documentation, functional testing, and training that verifies correct performance of building systems. This process judges correct performance of both individual systems and systems operating interactively according to the project design intent and the Government's operational needs. The Contractor, and other government contractors as necessary, must supply the personnel and technical resources needed to execute project-commissioning activities with the advisory oversight of the Government's Commissioning Specialist.

**3.6 Other Interfaces.** LSI will routinely have people on site performing construction surveillance to ensure critical interfaces are properly constructed. Provisions for close coordination and/or joint occupancy with LSI personnel and contractors, who require use/access to the site prior to construction completion, shall be provided by the Contractor. Also, interface will eventually be required with personnel of the Space and Missile Defense Command, the facility user.

## **4.0 PROJECT CONTROL SYSTEMS.**

**4.1 Contractor Management of Construction.** The Contractor shall effect prudent management of this effort in accordance with the contract requirements and the best practices of the USACE and the construction industry. All work shall be accomplished efficiently and in accordance with program/project planning, budgets, and schedule reflected in the accepted management system and approved integrated management plan. Furthermore, all project milestones and planning shall support, and be consistent with, NMD program milestones and schedules developed by the LSI. After award, any significant variations from the project requirements will be reported immediately to the CO, with a preliminary assessment of impacts and risks.

**4.2 Earned-value Management System (EVMS).** Within 30 days after partial NTP, the Contractor shall begin establishing and implementing an EVMS as required by DFAR 252.234-7000 listed in Section 00100, and DFAR 252.234-7001 listed in Section 00700 of this RFP. The Contractor shall use this system's concepts to manage, plan work, report technical progress, analyze data, and communicate contract status in all project reviews, reports, and meetings. The EVMS shall be used to integrate/track/plan/report all elements of the project including the NAS, Work Breakdown Structure (WBS), Work Authorization Documents (WAD), Integrated Master Schedule (IMS), Integrated Master Plan (IMP), Contract Funds Status Report (CFSR), and the Cost Performance Report (CPR). Each individual facility shall be separately tracked by this system.

4.2.1 Specific contract requirements (format, first submission, frequency of submission, level of WBS reporting, threshold for analysis, functional level for reporting, definitions, etc.) for the EVMS deliverables and reports mentioned above will be accomplished post-award as elements of the Contract Management Procedures.

4.2.1.1 Cost Performance Report (CPR), DD Form 2734. This report shall consist of five formats containing cost and related data for measuring the Contractor's cost and schedule performance. Data reported on the CPR shall be summarized directly from the same systems used for internal contractor management. Format 1 provides data to measure cost and schedule performance by summary level Work Breakdown Structure elements. Format 2 will contain the Contractor's functional organization as also shown in Format 4 and on the subcontractor's performance data. Format 3 provides the budget baseline plan against which performance is measured. Format 4 provides staffing forecasts for correlation with the current schedules and cost estimates. Format 5 is a narrative report used to explain significant cost and schedule variances and other identified contract problems and topics. Examples of DD Form 2734 are provided in Attachment 7.

4.2.1.2 Contract Funds Status Report (CFSR). The Contract Funds Status Report, DD Form 1586, sample Format 1<sub>[sfm2]</sub>, is designed to supply funding data to the Government for updating and forecasting contract funds requirements, Planning and decision making on funding changes to contracts, Developing funds requirements and budget estimates in support of approved programs, Determining funds in excess of contract needs and available for de-obligation, and obtaining rough estimates of termination costs. Examples of DD Form 1586 are provided in Attachment 8.

4.2.1.2.1 Terms as applied to CFSR

Open Commitments. For this report, a commitment represents the estimated obligation of the Contractor (excluding accrued expenditures) to vendors or subcontractors (based on the assumption that the contract will continue to completion).

Accrued Expenditures. For this report, include recorded or incurred costs as defined within the Allowable Cost, Fee and Payments Clause (FAR 52.216-7, Alternate I) plus the estimated fee earned. Such costs include:

- Actual payments for services or items purchased directly for the contract.
- Costs incurred, but not necessarily paid, for storeroom issues, direct labor, direct travel, direct other in-house costs, and allocated indirect costs.
- Progress payments made to subcontractors.
- Pension costs provided they are paid at least quarterly

Termination Costs. Although this report is prepared on the basis that the contract will continue to completion, it is necessary to report estimated termination cost by government fiscal year and generally by more frequent intervals on this contract. The frequency will be dependent on the funding need dates (i.e., quarterly) and should be compatible with the contract funding clauses, Limitation of Funds clause. Termination costs include such items as loss of useful life of special tooling, special machinery and equipment; rental cost of unexpired leases; and settlement expenses. The definition of termination costs is included in FAR 31.205-42.

**4.3 Conferences and Reviews.** A post-award conference shall be conducted within 15 days after partial NTP to discuss contract issues, contract management, subcontractors, and other topics as identified by the Government. An Integrated Baseline Review (IBR) shall be conducted within 4 months after contract award at the Contractor's facility. An EVMS Compliance Review will be conducted within 9 months after contract award at the Contractor's

facility. The Government and the Contractor shall jointly review all cost-reimbursable subcontractors' EVMS for DFAR 252.234-7001 compliance no later than 6 months after subcontract award. Program reviews, scheduled by the CO, shall be conducted at least twice yearly, one at the Contractor's facility and one at the overseeing USACE district headquarters. The Contractor, in conjunction with the Government, shall develop a detailed agenda 5 working days prior to the meeting. Two additional progress reviews may be scheduled by the CO at the Contractor's facility as necessary to effect prudent Government oversight and to ensure that Government requirements are fully met. The Contractor will participate, quarterly, in NMD Program management reviews. The Contractor may be requested to attend/support other meetings, or activities, as directed by the CO.

**4.4 Cost as an Independent Variable.** The Government will make trade-offs between cost (construction and life-cycle) and performance during the life of the NMD program. The Contractor is charged with ensuring the increased importance of providing cost visibility to design alternatives, advocating cost-driven solutions, and providing status toward meeting cost objectives. The following are examples of cost-performance tradeoffs that may be proposed. These are only examples and are not intended to be all inclusive.

- Life Cycle Cost
- Lower Operating Costs
- Methods of Construction
- Materials



**SECTION 00010  
SCHEDULE/INSTRUCTION TO OFFERORS**

**SCHEDULE**

**CONSTRUCTION  
NATIONAL MISSILE DEFENSE (NMD)  
ELEMENT LISTING**

**EARECKSON AIR STATION, ALASKA**

<u>CLIN</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>UNIT</u>	<u>PRICE</u>
0001AA	Construction of the X-Band Radar Facility Military Construction Defense (MCD) (See Drawings & Specifications) <sup>1</sup>	1	Job	\$ _____
0001AB	Project Management (MCD) (To include all non-manual labor and all other Other Direct Costs associated with non-manual labor)	1	Job	\$ _____
0001AC	Award Fee <sup>2</sup> for Construction of the X-Band Radar Facility (MCD)	_____ %		\$ _____
TOTAL (0001AA through 0001AC)				\$ _____

**NOTE:**

~~1.~~ See back-up sheets (Attachment 5 of Section 00800) for Site/Facility Supplementary Contract Information required.

~~2.~~ The Base Fee is zero. The Award Fee percentage must be within the range of 8% (minimum) - 15% (maximum). Proposals outside of this range will be considered unacceptable for award.

~~3.~~ For all CLINS listed above, the amount in accordance with FAR 52.232-22(b) (See Section 00700) is zero dollars. An estimated value, exclusive of fee will be in the schedule at time of award. Funding will be provided with each notice to proceed.

**CONSENT TO SUBCONTRACT FOR LONG LEAD-TIME ITEMS:** The following requirements have been identified as long lead-time items (not all inclusive):

- ~~1. Diesel Generators~~
- ~~2. Viscous Damper Shock Isolators~~
- ~~3. Barges~~
- ~~4. Form-work (for XBR Tower)~~
- ~~5. XBR Tower seismic isolators and dampers (Viscous Damper Shock Isolators)~~
- ~~6. Concrete Aggregate~~
- ~~7. Concrete Aggregate borrow area permit~~
- ~~8. Power Plant Generators~~

1. ~~4.~~ Barges

2. Form-work (for XBR Tower)

3. XBR Tower seismic isolators and dampers (Viscous Damper Shock Isolators)

- 4. Concrete Aggregate
- 5. Concrete Aggregate borrow area permit
- 6. Power Plant Generators

The Consent to Subcontract packages for these items will be submitted with the cost proposal in a separately sealed envelope. These will not be used for evaluation purposes as part of the source selection. See FAR 52.244-2.

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## SECTION 00100, Part A - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

**1.0 INTRODUCTION.** These instructions provide guidance to prospective offerors for preparing proposals in response to the Request for Proposals (RFP) for the National Missile Defense Tactical and Tactical Support Project. For further information on Contract Management Procedures, Section 00800, paragraph 22.0.

**1.1 Teaming Arrangements.** The U.S. Army Corps of Engineers will award a contract, using best value source selection procedures, in accordance with the approved acquisition strategy and only the concerns which responded to the pre-solicitation notice are eligible to submit an offer in response to the RFP. Teaming arrangements that are contemplated must conform to the anti-competitive teaming guidance addressed by Dr. J.S. Gansler, Under Secretary of Defense memorandum, dated 5 January 1999. This memorandum may be viewed on the following web site address:

<http://www.acq.osd.mil/dp/anticomptmg.pdf>

**1.2 Point of Contact.** The Contracting Officer and his representative are the sole points of contact for this acquisition. Address any questions or concerns to the CO. Written requests for clarification may be sent to the CO at the address located in Paragraph 2.3.

**2.0 GENERAL INSTRUCTIONS.** The following general instructions are applicable to proposals prepared for the NMD program:

**2.1 Discrepancies.** If an offeror believes that the requirements in these instructions contain an error, omission, or are otherwise unsound, the offeror shall immediately notify the CO in writing with supporting rationale.

**2.2 Reference Library.** For information purposes only, status information on the solicitation will be posted to the electronic library established on the U.S. Army Engineering and Support Center, Huntsville (USAESCH), world wide web address:

<http://www.hnd.usace.army.mil/bmd/continfo.htm>

**2.3 Preparation and Submission.** Offerors shall prepare proposals according to the following instructions and the information in Section 00010. Proposals must be organized into three volumes, using the volume titles, page limitations, and number of copies shown in Table 1. The original of each volume shall be marked "original." Proposals shall be addressed to the Contracting Officer and mailed to:

U.S. Army Corps of Engineers  
CEHNC-CT-E (ATTN: W. Hampton)  
P.O. Box 1600  
Huntsville, Alabama 35807-4301

Street Delivery Address  
4820 University Square  
Huntsville, Alabama 35816-1822

Each volume is due at this address at the time shown on SF 1442, block 10.

**Table 1. Proposal Submission Requirements**

Volume	Title	No. Originals	No. Copies	Page Limits
I	Technical Volume	1	7	150
II	Cost/Price Volume	1	5	None
III	Small Business Subcontracting Plan and Small Business Participation	1	1	None

One copy of the Cost/Price volume shall be submitted on CD-ROM in Microsoft Excel 97 format.

The Government will retain one copy of all unsuccessful proposals. Unless the offeror requests otherwise, the Government will destroy extra copies of unsuccessful proposals.

**2.4 Proposal Format and Content.** Offeror's should follow the guidance in this section for preparing proposals. To meet format and content elements of the RFP, the offeror's proposal should include all data and information sought by the RFP and should be submitted in accordance with these instructions. *Non-conformance with the specific proposal content and format stated in the RFP may result in rejection of the proposal.*

**2.4.1 General.** The proposal should be clear, concise, and should include sufficient detail for effective evaluation and for substantiating the validity of stated claims. The proposal should not simply rephrase or restate the Government's requirements, but rather should provide convincing rationale to address how the offeror intends to meet these requirements. Offerors should assume that the Government has no prior knowledge of offeror's capabilities and experience, and that the Government will base its evaluation on the information presented in the offeror's proposal and other sources authorized by this RFP. Offerors are hereby notified that electronic copies of their proposal must be identical to the hard-copy proposal submitted in response to this RFP. Hardcopy will rule in case of a conflict. Elaborate brochures or documentation, binding, detailed artwork, or other embellishments are unnecessary and are not desired.

**2.4.2** The Government will retain one copy of all unsuccessful proposals. Unless the offeror requests otherwise, the Government will destroy extra copies of such unsuccessful proposals.

**2.4.3 Binding and Labeling.** Each proposal volume should be separately bound in a three-ring loose-leaf binder, which permits the volume to lie flat when open. Staples shall not be used. A

cover sheet shall be bound in each book, clearly marked as to volume number, title, copy number, RFP identification, and the offeror's name.

**2.4.4 Page Format Restrictions and Limitations.** The following page format restrictions apply:

2.4.4.1 Page size shall be 8-1/2 by 11 inches, not including foldouts. Pages shall have 1-1/2 line spacing. Font size shall be no less than 10 point. Use at least 1-inch margins on the top and bottom and 3/4-inch side margins. Pages shall be numbered sequentially by major area within each volume.

2.4.4.2 Maximum pages allowed in Volume I are 150. All pages will be counted except cover pages, tables of content, tab indexes, and glossaries. The Government will not evaluate pages in excess of the limit. The Government will count pages by beginning with the first countable page and proceeding to the last. When both sides of a sheet display printed material, it shall be counted as two pages. **Pages in excess of the maximum will be removed from the volumes prior to the evaluation.**

2.4.4.3 Foldouts. Legible tables, charts, graphs, and figures shall be used wherever practical to depict organizations, systems and layout, implementation schedules, plans, etc. These displays shall be uncomplicated and legible, minimum font size 10, and shall not exceed 11 by 17 inches in size. Foldout pages shall fold entirely within the volume and shall count as two pages. When both sides of a sheet display printed material, it shall be counted as four pages. Foldout pages may only be used for large tables, charts, graphs, diagrams and schematics, not for pages of text.

**2.4.5 Indexing.** Each volume shall contain a detailed table of contents to delineate the subparagraphs within that volume. Tab indexing shall be used to identify major areas.

**2.4.6 Cost Information.** All cost information shall be contained only in the Cost/Price volume. The cost proposal will be based on the 90% XBR design for Eareckson AS, which will be incorporated by amendment at a later date. The amendment will set a date for receipt of cost proposals.

**2.4.7 Cross-Referencing.** Cross-referencing within a proposal volume is permitted where its use would conserve space without impairing clarity. Information required for proposal evaluation, which is not found after a reasonable search, will be assumed to have been omitted from the proposal. Cross-referencing between volumes is prohibited.

**2.4.8 Glossary of Abbreviations and Acronyms.** Each volume should contain a glossary of all abbreviations and acronyms used, with an explanation for each. Glossaries do not count against the page limitations for their respective volumes.

**3.0 INSTRUCTIONS FOR TECHNICAL VOLUME I.** The Technical Volume should be specific and complete, and should cover Evaluation Factors 1 through 4. Legibility, clarity, and

coherence are very important. Proposal responses to Government requirements will be evaluated based on the evaluation factors and the approach defined in Section 00100, Part B. Be specific in defining your approach to accomplishing the effort--do not simply reiterate the objectives or reformulate the requirements specified in the RFP.

### **3.1 Factor 1 – Management**

**3.1.1 Integrated Master Plan (IMP) / Integrated Master Schedule (IMS).** The IMP is the cornerstone of the performance-oriented business approach implemented on this contract. The IMP should provide details for planning, establishing, and implementing all processes the offeror intends to use to manage the program. These processes should include program and technical management; logistics management; configuration and data management; earned-value management; reliability and maintainability; subcontracts, quality; verification; safety; environmental, and construction readiness.

3.1.1.1 The IMP should clearly and concisely describe the offeror's plans for executing the NMD program, controlling and accomplishing each effort, and managing cost and schedule risk. The IMP should define and describe the integration of all the diverse tasks and events that must be successfully completed. Accordingly, IMP shall include a Level 4 WBS. The IMP must identify key systems engineering tasks, their interrelationships with program milestones and BOD's, and the specific criteria that will be used to track and measure successful task completion. The IMP must provide top-to-bottom traceably from designs through the SOW.

3.1.1.2 The IMP must be used to prepare the IMS. The IMP should contain proposed milestones/events, major events, key tasks, significant accomplishments for each milestone/event, entrance and exit criteria where required, and a schedule-oriented timeline tied directly to the IMS. The IMP must provide adequate details to show the interrelationships of milestones and task schedules.



3.1.1.3 As part of the IMP, the offeror must clearly portray his organizational structure and show how this organization will support the NMD program. The IMP must clearly define the relationships between the program and the overall corporate structure, the reporting responsibilities, the role of upper and matrix management, the role of subcontractors, the limits of decision making authority, and the communication processes. The IMP should include a staffing plan showing the manpower build-up to meet this critical schedule. A clear description of the proposed team, the inter-relationship of team members, their roles and responsibilities, demonstrated capacity to perform the effort, and an identification of key personnel (project manager, job superintendent, and quality control system manager) including their qualifications and experience must be attached to the IMP. (Use the attached resume form.) For key personnel not employed by the offeror on the date of the proposal, letters of commitment, signed by the individual concerned, providing an unconditional commitment in the event of a contract award, shall be provided. The IMP plan for fast-ramp to meet the XBR schedule is very important.

3.1.1.4 Proposals should describe the offeror's approach, policies, procedures, processes, and milestones for accomplishing configuration and data management. The offeror should describe the adequacy of the proposed implementation of the contractor information system to include, access, security, ease of use, quality and amount of data, and frequency of updates.

3.1.1.5 The IMS is an integral part of the IMP. All schedule information must be consistent with the milestones described in the IMP. Each item in the IMS should be defined in the offeror's proposal, and all appropriate tasks in the proposal should be considered in the IMS, to include proposed BOD's. The offeror should index the activities and milestones in the IMS to the WBS and proposal paragraphs whenever possible. Offerors must clearly portray how they will ensure all scheduled BOD's are met. Meeting the schedule is paramount.

3.1.1.6 The IMS should be provided for all activities to WBS Level 4 (with a WBS dictionary) using contract award as the start date. The IMS should provide, at a minimum, task numbers, task names, durations, predecessor tasks, and a start date and a finish date for all activities, events and milestones identified in the IMP. The IMS must clearly illustrate the interdependencies of all activities, events and milestones. The IMS must define the program's critical path for the period of performance of this contract and provide a supporting narrative that explains the critical path and any unusual program aspects. Finally, the offeror must provide the ground rules and assumptions used in estimating the task duration shown in the IMS. In addition, provide a summary level NAS.

**3.1.2 Schedule/Cost Subcontractor Control.** The offeror should demonstrate his ability to manage and control multiple subcontractors and multiple tasks to avoid cost and schedule impacts. The proposal should present evidence that if awarded this effort how you will be able (even in a dynamic, continually changing environment) to track, monitor, and control the effort to preclude cost overruns and schedule growth. Describe how your cost estimating system interfaces your EVMS/cost control system.

**3.1.3 Implementation, Use, and Certification of EVMS.** The offeror should describe its Earned-value Management System (EVMS) and discuss any certifications or approvals. The proposal should:

- Describe plans to implement an EVMS as required by DFARs 252.234-7000 and 7001 for this solicitation.
- Demonstrate how you will use the system's concepts to manage, plan work, report technical progress, analyze data, and communicate contract status.
- Discuss the approach for using EVMS to integrate/track/plan/report all elements of the project including the NAS, Work Breakdown Structure, Work Authorization Documents, Integrated Master Schedule, Integrated Master Plan, Contract Funds Status Report, and the Cost Performance Report.
- Discuss how you will integrate/plan/report/ long lead-time items.

**3.1.4 Risk Management.** The offeror should provide an approach to manage, mitigate, or eliminate risks relative to construction execution. The proposal must present the methodology for identifying risk areas throughout the construction life-cycle, including thresholds for reporting. The proposal must identify those elements of the project which you feel are risk areas (technical, schedule, cost, coordination risk, etc.) and classify them as to their criticality, severity, and potential impact on cost, schedule, and performance. The proposal should address permeation of risks into other areas and advance planning (realistic "work-arounds" or risk mitigation).

**3.1.5 Logistics Management.** The offeror should describe his approach to logistics management for the project. The description should include selection of subcontractors and vendors, use of local hire, make or buy, and transportation issues. Additionally, address the reliability and sustainability of installed equipment and describe the procedure for best value analysis in logistics management. The offeror should indicate whether it has Contractor Purchasing System Review approval.

## **3.2 Factor 2 – Technical**

**3.2.1 Overall Technical Approach.** The offeror will be evaluated on the proposed overall technical approach to construction of all required elements of the Summary of Work (SOW). Special and key equipment or resources should be identified. The overall approach should demonstrate expertise in special construction (seismic, high altitude electromagnetic pulse, TEMPEST) and Change/Interface Management and Control. The offeror should identify any innovative or unique techniques/approaches proposed for use on the project. Proposed approach should properly consider constraints on construction and environmental factors including obtaining permits to satisfy environmental laws and regulations.

**3.2.2 Construction Requirements.** The offeror should propose specific plans and approaches in the construction of critical elements of the design including the radar facility and power plant (whichever elements are included within the site being proposed on). For example, some of the areas to be addressed include how you will ensure incremental BOD's of Antenna Mount Foundation and Radome Support, demonstrate methodology for determining the natural

frequency of constructed antenna mount foundation, how HEMP/TEMPEST protection will be accomplished and proven, methods for installation of seismic base isolation systems, coordination with the Government on delivery dates, transportation and environmental protection, continual interface definition and control, construction phasing to support timely installation, storage, etc. The offeror should discuss resource requirements, personnel and equipment; propose a methodology for providing a quality product safely, quickly, and efficiently; provide a similar discussion for critical activities associated with the power plant and, as necessary, the remaining facilities.

**3.2.3 Quality Control.** The proposal should demonstrate how you will comply with Section 01451 and ensure only high quality work. This includes the accuracy of your work, minimizing re-work hours, deviations, completeness, conformance, etc.

**3.2.4 Safety.** The offeror should demonstrate the quality of his proposed safety program by providing details of its organization, implementation and use. A discussion should include the relationship with other organizational elements, interfaces with the Government, documentation and reporting requirements, inspections, training, goals, and employee awareness efforts.

### **3.3 Factor 3 - Experience.**

**3.3.1 Summaries.** The offeror shall provide individual summaries for the last ten construction contracts of similar size and complexity that were awarded to the offeror prior to 01 May 2000. Past projects may be for federal, state, local government, or private customers. The ten projects should clearly demonstrate the offeror's ability to complete similar large, construction projects (including cost reimbursable), at the same or similar location(s), in the same or similar environments, in a short time-frame, with multiple interim schedule milestones, while effectively controlling cost overruns and schedule growth. The example projects should include construction of similar type building structures and supporting infrastructure. The example projects should also demonstrate the offeror's ability to provide quality construction and to satisfy the customer/owner. The offeror must have been the prime contractor, or the prime construction contractor, on each project (in the case of joint venture, past projects from any of the signatory firms are acceptable). At least one project submitted must be the most recent cost reimbursement project completed.

The summaries should provide the following information for each project:

- Name of the project,
- Rate of placement,
- Contract amount at award,
- Type of contract,
- Experience with EVMS
- Amount added by modifications,
- Final contract amount or estimated cost at completion,
- Explanation of any contract cost growth,
- Original contract completion date,

- Multiple interim schedule milestones,
- Time added by modifications,
- Final contract completion date per contract terms
- Actual completion date or currently estimated completion date
- Explanation of any completion date or estimated completion date that occurred after originally scheduled contract completion date
- Termination of work prior to completion or “cure/show cause” letters,
- Explanation of early termination or “cure/show cause” letter,
- Safety record including significant safety incidents, accidents, and violations, and lost time work record,
- Significant customer concerns and complaints,
- A brief description of the project to include features of work similar to proposed work to include but not be limited to:
  - Reinforced concrete vertical construction,
  - Power plant construction,
  - Electronic countermeasures (HEMP and TEMPEST),
  - Supporting road work and quarters renovation;
- Location of the project;
- Name and address of owner or agency,
- Name, FAX, and telephone number of an offeror's representative who is knowledgeable of the project and can be readily contacted
- Name, address, FAX, and telephone number of a representative of the owner who is familiar with the contract and can be readily contacted
- Name, address, and telephone number of the Contracting Officer.

The summary shall be submitted on the project experience form provided at the end of this section. The form may be reproduced and additional lines added if additional space is required for responses. Information provided on the project experience form will be evaluated under Factor 3 - Experience, and under Factor 4 - Past Performance. Information relating to the five sub-factors identified in Section 00100, Part [sfm3]B, para. 2.4, will be evaluated under Past Performance. All other information will be evaluated under Experience. The offeror is responsible for the accuracy of the information provided regarding contact information of references. In the event the reference(s) cannot be contacted, the Government may not attempt to obtain alternate references.

**3.3.2 Safety.** Submit OSHA Form 200 for the last 5 years prior to 1 May 2000.

### **3.4 Factor 4 – Past Performance (see FAR 42.1501).**

**3.4.1 Owner Survey Forms.** The information provided by the owner survey forms will be used in evaluating the offeror’s past performance. For each of the ten projects submitted under Factor 3, Experience, the offeror shall distribute copies of the offeror’s completed project experience forms and the blank owner survey forms (provided at the end of this section). The forms (both owner survey form and project experience form) shall be distributed to the owner/client (of that particular project) by the offeror. Both forms shall be returned by the owner/client directly to the

Government Contracting Officer at the address given for proposal submission in paragraph 2.3. Submission should be received by the receipt of Volumes I and III.

**3.4.2 Past Performance Evaluation.** During past performance evaluation, the Government reserves the right to look outside of the proposals for past performance information of the offeror. The Government will consider information submitted by the offeror, as well as any other relevant and reliable information obtained from any other source (including information from Government personnel and databases). The Government will evaluate the currency and relevancy of the information, the source of the information, and general trends in performance, and appropriately factor the information into the evaluation. Information on significant problems encountered, customer dissatisfactions, and corrective actions taken should be provided. This comparative assessment of past performance is separate from the responsibility determination. In the event an offeror lacks a record of relevant past performance, or if information from a client is not available, the offeror will not be evaluated favorably or unfavorably for past performance.

#### **4.0 INSTRUCTIONS FOR SUBCONTRACTING PLAN AND SMALL BUSINESS PARTICIPATION – VOLUME III**

##### **4.1 Factor 5.**

**4.1.1 Subcontracting Plan.** In accordance with FAR 19.704, the following information shall be contained or addressed in each offeror's subcontracting plan.

4.1.1.1 Separate percentage goals for using small business, HUBZone small business, small disadvantaged business, women-owned small business concerns, historically black colleges and universities, and minority institutions as subcontractors;

4.1.1.2 A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business, HUBZone small business, small disadvantaged business, women-owned small business, historically black colleges and universities, and minority institutions concerns;

4.1.1.3 A description of the principal types of supplies and services to be subcontracted and an identification of the types planned for subcontracting to small business, HUBZone small business, small disadvantaged business, women-owned small business concerns, historically black colleges and universities, and minority institutions concerns;

4.1.1.4 A description of the method used to develop the subcontracting goals;

4.1.1.5 A description of the method used to identify potential sources for solicitation purposes;

4.1.1.6 A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, historically black colleges and universities, and minority institutions concerns;

4.1.1.7 The name of an individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual;

4.1.1.8 A description of the efforts the offeror will make to ensure that small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, historically black colleges and universities, and minority institutions concerns have an equitable opportunity to compete for subcontracts;

4.1.1.9 Assurances that the offeror will include the clause at FAR 52.219-8, Utilization of Small Business Concerns (see FAR 19.708(a)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) to adopt a plan that complies with the requirements of the clause at FAR 52.219-9, Small Business Subcontracting Plan (see FAR 19.708(b));

4.1.1.10 Assurances that the offeror will-

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, summary Subcontract Report, following the instructions on the forms or as provided in agency regulation; and
- (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295; and

4.1.1.11 A description of the types of records that will be maintained concerning procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and to award subcontracts to them

**4.1.2 Small Business Participation.** The offeror will provide small business goals and achievements for the ten projects included in the Experiences references, as requested on the Project Experience Form. Offerors should strive to place subcontracts to meet the following goals: 61.4% of the work subcontracted should be Small Businesses including 9.1% Small Disadvantaged Businesses, and 5% Women-owned Businesses. An ~~indian~~Indian tribe or tribally owned corporation does not have to qualify as a small business concern to be counted toward the Small Disadvantaged Business Goals.

## **5.0 INSTRUCTIONS FOR COST/PRICE – VOLUME II**

The Cost Proposal shall include the filled-in schedule at page 12.

**5.1 FACTOR 6 - COST/PRICE.** The offeror shall submit a construction cost estimate for the appropriate cost proposal schedule with a corresponding Level 34 Work Breakdown Structure (with abbreviated dictionary) for purposes of the cost proposal only. The breakdown shall conform to the format of the breakdown sheets attached to section 00800, Attachment 5. The offeror shall also submit a Network Analysis System corresponding to the WBS and a staffing

plan to accomplish that schedule. If caps are proposed for any category of direct or indirect costs provide an explanation of how the caps will stay in effect during contract performance.

Direct and indirect cost shall be identified with no markups or factors by showing quantities and unit costs. The column labeled Indirect Costs (all inclusive) should include any overhead, G&A, home office, subcontractor markup. In addition the offeror shall provide detailed information showing cost accounts included in each of their overhead pools, i.e. labor burden (fringes), G&A, field overhead, and any other pools. A sample worksheet shall be provided for each overhead pool in like manner to SAMPLE A – G&A Overhead Pool.

**SAMPLE A – G&A Overhead Pool**

Indirect Salaries	
Home Office Salaries	
Payroll Taxes	
Insurance	
Lease	
Utilities	
Repairs & Maintenance	
Interest Expense/FCCM	
Advertising	
Office Supplies	
Personal Property Taxes	
Contributions	
Depreciation Office Equipment	
Legal Fees	
Bad Debts	
State Income Taxes	
Total G&A Expense	
Total Direct Labor	
Add Labor Burden @ __%	
Other Direct Costs	
Total	
Percentage Computation	
G&A Expenses	
Base	

All costs unallowable by FAR Part 31 should be removed from overhead pools before computation of the submitted rate.

Also, the offeror should provide DCAA Financial Statements in their most current state.

A work sheet for a generic cost proposal is shown in WORKSHEET B and shall be completed and submitted by the offeror. Costs associated with this scenario will be subjectively evaluated and used to determine the reasonableness, affordability, realism, and best value to the government. The worksheet is to be used to illustrate the application of the offeror's markups.

The offeror shall also submit a comprehensive list of anticipated staffing by discipline and base hourly rate (excluding mark ups). Rates should correspond to the estimated base hourly rates at time work is anticipated to occur.



### WORKSHEET B

Discipline	Hourly Effort	Direct Cost	Labor Burden Cost	G&A Cost	Overhead Cost	FCCOM	Other*	Total Cost
Program Manager		\$400						
Project Manager		\$1,200						
Work Site Supervisor		\$3,600						
Electrician		\$2,400						
Mechanic		\$2,000						
Material Cost from Subcontractor		\$10,000						
Equipment Rental		\$3,500						
Travel & Per Diem		\$2,500						
TOTAL								

\* Define the composition of “other.”

**SOLICITATION NO. DACA87-00-R-0001**  
**NATIONAL MISSILE DEFENSE TACTICAL AND TACTICAL SUPPORT FACILITIES**  
**PROJECT EXPERIENCE FORM**

Provide a completed form for each project for which experience is being claimed. Submit only projects on which the offeror was the prime contractor or prime construction contractor.

Name of Offeror: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Location of Project: \_\_\_\_\_

Was Project a cost reimbursement type contract (Y/N)? \_\_\_\_\_

Was an EVMS used for Project (Y/N)? \_\_\_\_\_

Project Average Rate of Placement \$/Day \_\_\_\_\_

Brief Description of Project \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract Amount at Award: \_\_\_\_\_

Final Contract Amount or Estimated Cost at Completion: \_\_\_\_\_

Amount added by Modification: \_\_\_\_\_

Explanation of any Cost Growth

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Multiple Interim Schedule Milestones (to include scheduled start date):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Original Contract Completion Date: \_\_\_\_\_

Final Contract Completion Date : \_\_\_\_\_

Actual Completion Date (: \_\_\_\_\_

Time added by Modification: \_\_\_\_\_

Explanation of any Late Finish:

\_\_\_\_\_

**SOLICITATION NO. DACA87-00-R-0001**  
**NATIONAL MISSILE DEFENSE TACTICAL AND TACTICAL SUPPORT FACILITIES**  
**PROJECT EXPERIENCE FORM (Continued)**

Was the project terminated early or were cure/show cause letters reviewed? \_\_\_\_ Yes \_\_\_\_ No

Explain early termination (default/convenience) or cure/show cause letters

---

---

Safety record: \_\_\_\_ Accidents, \_\_\_\_ Incidents, \_\_\_\_ Violations

List and explain any customer concerns or dissatisfaction

---

---

What were the SDB, WOB and small business percent goals in the original contract?

SDB: \_\_\_\_ WOB: \_\_\_\_ Small Business: \_\_\_\_ HBCU: \_\_\_\_ HUBZONE: \_\_\_\_ MI: \_\_\_\_

What was the actual percent achieved at contract completion?

SDB: \_\_\_\_ WOB: \_\_\_\_ Small Business: \_\_\_\_ HBCU: \_\_\_\_ HUBZONE: \_\_\_\_ MI: \_\_\_\_

Was the project owner an agency of the federal government? \_\_\_\_ Yes \_\_\_\_ No

Name, address, FAX and telephone number of the owner:

---

Name and telephone number of a representative of your firm who is knowledgeable of this project and can readily be contacted:

---

Name, address, FAX and telephone number of a representative of the owner who is knowledgeable of this project and can be readily contacted:

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Name, address, FAX and telephone number of the Contracting Officer if project was for federal government:

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**SOLICITATION NO. DACA87-00-R-0001**  
**NATIONAL MISSILE DEFENSE TACTICAL AND TACTICAL SUPPORT FACILITIES**  
**OWNER/CLIENT PAST PERFORMANCE SURVEY**

(Fill out all applicable parts)

The agency is interested in your assessment of the named company's past performance." The quoted term refers to the company's record of conforming to contract requirements and to standards of good workmanship; the firm's record of forecasting and controlling costs; the firm's adherence to contract schedules including the administrative aspects of performance; the firm's history of reasonable and cooperative behavior and commitment to customer satisfaction; and the firm's general business-like concern for the interest of the customer.

These questions relate to the work performed at \_\_\_\_\_ (Name and location of designated project) by  
(Name of Offeror) \_\_\_\_\_.

Please describe your role in the project, and identify any persons helping you to provide responses to this questionnaire:

1. Is the information provided by the contractor in the Project Experience Form accurate and correct to the best of your knowledge and why? Yes / No. \_\_\_\_\_ Explanation : \_\_\_\_\_

2. How would you rate the performance of this Contractor on the subject project?

a. The company's record of conforming to contract requirements and standards of good workmanship  
Excellent      Good      Satisfactory      Fair      Unsatisfactory

b. The firm's record of forecasting and controlling costs  
Excellent      Good      Satisfactory      Fair      Unsatisfactory

c. The firm's adherence to contract schedules including the administrative aspects of performance  
Excellent      Good      Satisfactory      Fair      Unsatisfactory

d. The firm's history of reasonable and cooperative behavior and commitment to customer satisfaction  
Excellent      Good      Satisfactory      Fair      Unsatisfactory

e. The firm's general business-like concern for the interest of the customer  
Excellent      Good      Satisfactory      Fair      Unsatisfactory

f. The firm's record of adherence to their Contractor's Purchasing System  
Excellent      Good      Satisfactory      Fair      Unsatisfactory

3. Comments. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name \_\_\_\_\_ Telephone \_\_\_\_\_

Title \_\_\_\_\_ Fax \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Date \_\_\_\_\_



## **SECTION 00100, Part B - EVALUATION FACTORS FOR AWARD**

**1.0 Basis for Contract Award.** In accordance with FAR 15.306(a)(3) and FAR 52.215-1, the Government intends to award, without discussions, one contract to the offeror who represents the best overall value to the Government. Notwithstanding, FAR52.215-1(f)(6), there will be only one award. Technical, management, experience, past performance, and small business participation will be scored factors. Cost will not be scored, but will be evaluated for reasonableness and realism.

NOTE: Offerors are advised that employees of the firms identified below may serve as technical advisors in the source selection process. These individuals will be authorized access to only those portions of the proposal data and discussions that are necessary to enable them to perform their respective duties. Such firms are expressly prohibited from competing on the subject acquisition and from proposal scoring, ranking, or recommending the selection of a source.

LSI - The Boeing Company, Huntsville, AL  
LSI – Raytheon Electronics Systems Company, Waltham, MA  
LSI – Teledyne Brown Engineering, Huntsville, AL  
Quality Research, Huntsville, AL

In accomplishing their duties related to the source selection process, the aforementioned firms may require access to proprietary information contained in the offerors' proposals. Therefore, pursuant to FAR 9.505-4, these firms must execute an agreement with each offeror that states that they will:

- (1) protect the offeror's information from unauthorized use or disclosure for as long as it remains proprietary and
- (2) refrain from using the information for any purpose other than that for which it was furnished.

To expedite the evaluation process, each offeror must contact the above companies to effect execution of such an agreement prior to submission of proposals. Each offeror shall submit copies of the agreement with their proposal.

A contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government will protect their proprietary information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished. Only Government personnel will be allowed access to cost information.

**2.0 EVALUATION FACTORS.** There are six evaluation factors for award. The five scored factors in their relative order of importance are:

- Management
- Technical
- Experience

- Past Performance
- Small Business Subcontracting Plan and Small Business Participation

Management is significantly more important than technical; technical is significantly more important than experience or past performance which are equal in value. Small Business Participation is significantly less important than experience or past performance.

The sixth evaluation factor is Cost/Price. Cost/Price is not scored and is significantly less important than the combination of factors listed above.

The five scored factors are further broken down as described below.

**2.1 Management.** Sub-factors in their relative order of importance are:

- (a) Overall Management Approach
- (b) Implementation, Use and Certification of EVMS
- (c) Subcontractor/Cost/Schedule Control
- (d) Risk Management
- (e) Logistics Management

Overall management approach and implementation, use and certification of EVMS are of equal importance, and each is significantly more important than subcontractor/cost/schedule control, risk management or logistics management which are each of equal importance.

**2.2 Technical:** Sub-factors in their relative order of importance are:

- (a) Overall Technical Approach
- (b) Construction Requirements
- (c) Quality Control
- (d) Safety

Overall technical approach and construction requirements are equal in value and are each significantly more important than quality control or safety, which are also equal in value.

**2.3 Experience.** Sub-factors are:

- (a) Similar job
- (b) Similar location
- (c) Cost reimbursable

Similar job and similar location are of equal importance and each are more important than cost reimbursable.

**2.4 Past Performance.** Sub-factors are:

- (a) The offeror's record of conforming to contract requirements and standards of good workmanship, including the offeror's record of adherence to its Contractor's Purchasing System

- (b) The offeror's record of forecasting and controlling costs
- (c) The offeror's adherence to contract schedules including the administrative aspects of performance
- (d) The offeror's history of reasonable and cooperative behavior and commitment to customer satisfaction
- (e) The offeror's general business-like concern for the interest of the customer

Sub-factor (a) is significantly more important than each of the remaining sub-factors, which are all of equal value.

**2.5 Subcontracting Plan and Small Business Participation.** Sub-factors, which are of equal value, are:

- (a) Proposed usage
- (b) Usage on past contracts

Small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small business offerors will be given full credit for this factor.

**2.6 Cost/Price.** Cost will not be a scored criterion, but will be competitively evaluated as to reasonableness and realism. Cost/price will be submitted separately in Volume II. Offers that are found to be unreasonably high may be considered unacceptable and may be rejected on that basis. In accordance with FAR 15.404-1(d)(1), the Contracting Officer will conduct a cost realism analysis for all proposals; the agency may reject an offer that reflects a serious lack of cost realism. Cost realism analysis will determine the most probable cost of performance for each offer. The probable cost may differ, either upward or downward, from the offeror's proposed cost, and will reflect the Government's best estimate of the cost of any contract that is likely to result from the acceptance of the proposal. The probable cost will be determined using the approach of FAR 15.404-1(d)(2)(ii). Offerors should substantiate performance claims for costs that could be deemed low. If the offeror proposes unrealistic costs, such costs could be deemed to reflect a lack of understanding of the applicable technical or management sections of the offeror's proposal. Such a lack of understanding will be appropriately factored into the relevant technical or management ratings. The agency[sfm4] will evaluate the award fee in accordance with the Schedule Note 2. The agency will evaluate proposals on an individual basis to determine whether the offeror has proposed adequate incentive to perform in an outstanding or superior manner. For additional price/cost considerations see FAR 52.219-4, and FAR 52.215-1(f)(8) and (9).

**2.7 Alternate/Multiple Proposals.** Alternate/multiple proposals will not be accepted, except for circumstances described in FAR 52.225-12(d)(1)



## Section 00100 Provisions

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52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 99)

(a) Contractor identification is essential for complying with statutory contract reporting requirements. Therefore, the offeror is requested to enter, in the block with its name and address on the Standard Form 33 or similar document, the annotation "DUNS" followed by the DUNS number which identifies the offeror's name and address exactly as stated in the offer.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

- (1) Company name.
- (2) Company address.
- (3) Company telephone number.
- (4) Line of business.
- (5) Chief executive officer/key manager.
- (6) Date the company was started.
- (7) Number of people employed by the company.
- (8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.customerservice@dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at [globalinfo@dnb.com](mailto:globalinfo@dnb.com).

(End of provision)

52.211-14 NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE USE (SEP 1990)

Any contract awarded as a result of this solicitation will be X DX-C2 rated order; DO rated order certified for national defense use under the Defense Priorities and Allocations System (DPAS) (15 CFR 700), and the Contractor will be required to follow all of the requirements of this regulation.

(End of provision)

52.215-1 INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (FEB 2000)

(a) Definitions. As used in this provision--

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

"In writing or written" means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in

response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

“Time”, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals. (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show--

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Submission, modification, or revision, of proposals.

(i) Offerors are responsible for submitting proposals, and any modifications, or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) Offer expiration date. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall--

(1) Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed--in whole or in part--for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of--or in connection with-- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award. (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

- (3) The Government may waive informalities and minor irregularities in proposals received.
- (4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.
- (5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.
- (6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.
- (7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.
- (8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.
- (9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.
- (10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.
- (11) The Government may disclose the following information in postaward debriefings to other offerors:
- (i) The overall evaluated cost or price and technical rating of the successful offeror;
  - (ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;
  - (iii) A summary of the rationale for award; and
  - (iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(End of provision)

#### 52.215-16 FACILITIES CAPITAL COST OF MONEY (OCT 1997)

- (a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in subparagraph 31.205-10(a)(2) of the Federal Acquisition Regulation are met. One of the allowability criteria requires the prospective contractor to propose facilities capital cost of money in its offer.
- (b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a Cost Plus Award Fee contract resulting from this solicitation.

(End of provision)

52.225-12 NOTICE OF BUY AMERICAN ACT REQUIREMENT-- CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2000)

(a) Definitions. Construction material, designated country construction material, domestic construction material, foreign construction material, and NAFTA country construction material, as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act--Balance of Payments Program--Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act or Balance of Payments Program, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers. (1) When an offer includes foreign construction material, other than designated country or NAFTA country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic, designated country, or NAFTA country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, designated country, or NAFTA country construction material, and the offeror shall be required to furnish such domestic, designated country, or NAFTA country construction material. An offer based on use of the foreign construction material for which an exception was requested--

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting

Office (GAO), shall be served on the Office of Counsel (addressed as follows) by obtaining written and dated acknowledgment of receipt from Mr. Craig R. Schmauder, USACE Huntsville Center, P.O. Box 1600, ATTN: HNC-OC, Huntsville, AL 35816.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

#### 52.236-27 Alternate I Site Visit (Construction) (FEB 1995).

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) An organized site visit has been scheduled for--

17 - 20 July 2000 for Eareckson Air Station Site

POC Name: Ted Schindler  
Address: US Army Engineer District, Alaska  
8324 Kuter Drive  
Elmendorf AFB, AK 99506  
Telephone: (907) 753-5640 or -5650  
FAX (907) 753-0438

(c) Participants will meet at--  
U. S. Army Corps of Engineers, Elmendorf AFB, AK 99507

(End of provision)

#### 52.242-4152 PREPROPOSAL CONFERENCE AND SITE VISIT

(a) A pre-proposal conference in connection with the Request for Proposals (RFP) will be held at 0800 hours July 21, 2000 at the Corps of Engineers District in Anchorage, AK. Technical and Administrative personnel will be on hand to discuss the requirement. In order to expedite the conference, prospective offerors are requested to submit written questions to the contracting officer not later than July 12, 2000, specifying the section and paragraph of the RFP for which clarification is desired. However, questions which cannot be submitted in time to reach the contracting officer on or before July 12, 2000, may be submitted at the conference. ALL QUESTIONS MUST BE SUBMITTED IN WRITING. Prospective offerors are strongly encouraged to submit follow-on questions as soon as possible after the conclusion of the conference. A summary of the conference proceedings, including questions and answers, will be posted on the USAESCH home page at <http://www.hnd.usace.army.mil>.

(b) Offerors who plan to have representatives at this conference are requested to furnish the names and titles of their representatives to the Contracting Officer upon receipt of the RFP.

(c) Potential offerors are not limited on the number of representative to attend the pre-proposal conference, however potential offerors may only send up to three representatives to the site visit.

#### 52.236-28 PREPARATION OF PROPOSALS--CONSTRUCTION (OCT 1997)

(a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a proposal must initial each erasure or change appearing on any proposal form.

(b) The proposal form may require offerors to submit proposed prices for one or more items on various bases, including--

(1) Lump sum price;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words "no proposal" in the space provided for any item on which no price is submitted.

(d) Alternate proposals will not be considered unless this solicitation authorizes their submission.

(End of provision)

#### 252.234-7000 NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (MAR 1998)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) has recognized that the proposed earned value management system (EVMS) complies with the EVMS criteria of DoD 5000.2, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, or that the proposed cost/schedule control system has been accepted by the Department of Defense.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS criteria.

(1) The plan shall--

(A) Describe the EVMS the offeror intends to use in performance of the contract;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the criteria;

(C) Describe the management system and its application in terms of the 32 EVMS criteria;

(D) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(E) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with EVMS criteria.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's plan for EVMS before contract award.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the criteria. The prime contractor and the Government shall agree to subcontractors selected for application of the EVMS criteria.

(d) The point-of-contact for questions and issues pertaining to Eareckson Air Station, Alaska will be Mr. Theodore Schindler, 907-753-5640. Do not contact the 611<sup>th</sup> Air Force at Eareckson, Alaska.



## SECTION 00600 Representations & Certifications

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SECTION 00600 CLAUSES INCORPORATED BY FULL TEXT

52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this Certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)

(a) Definitions.

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

\_\_\_ TIN:-----

\_\_\_ TIN has been applied for.

\_\_\_ TIN is not required because:

\_\_\_ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

\_\_\_ Offeror is an agency or instrumentality of a foreign government;

\_\_\_ Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

\_\_\_ Sole proprietorship;

\_\_\_ Partnership;

\_\_\_ Corporate entity (not tax-exempt);

\_\_\_ Corporate entity (tax-exempt);

\_\_\_ Government entity (Federal, State, or local);

\_\_\_ Foreign government;

\_\_\_ International organization per 26 CFR 1.6049-4;

\_\_\_ Other-----

(f) Common parent.

\_\_\_ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

\_\_\_ Name and TIN of common parent:

Name-----

TIN-----

(End of provision)

52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

(a) Definition. Women-owned business concern, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it ( ) is, ( ) is not a women-owned business concern.

(End of provision)

52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAR 1996)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that--

(i) The Offeror and/or any of its Principals--

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

52.215-6 PLACE OF PERFORMANCE (OCT 1997)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, {time} intends, {time} does not intend [check applicable block] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks ``intends" in paragraph (a) of this provision, it shall insert in the following spaces the required information:

-----  
Place of performance (street  
address, city, state, county, zip code)  
-----

Name and address of owner and  
operator of the plant or facility  
if other than offeror or respondent  
-----

-----  
-----  
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52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (MAY 1999) ALTERNATE I (OCT 1998) & ALTERNATE II (NOV 1999)

(a)(1) The standard industrial classification (SIC) code for this acquisition is 1629.

(2) The small business size standard is \$17M.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations. (1) The offeror represents as part of its offer that it ( ) is, ( ) is not a small business concern.

(2) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, for general statistical purposes, that it ( ) is, ( ) is not a small disadvantaged business concern as defined in 13 CFR 124-1002.

(3) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents as part of its offer that it ( ) is, ( ) is not a women-owned small business concern.

(4) ([Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, as part of its offer, that--

(i) It \_\_\_\_ is, \_\_\_\_ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It \_\_\_\_ is, \_\_\_\_ is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(4)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. ([The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.]) Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(5) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, as part of its offer, that--

(i) It ( ) is, ( ) is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It ( ) is, ( ) is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(5)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(c) Definitions. "Joint venture," for purposes of a small disadvantaged business (SDB) set-aside or price evaluation preference (as prescribed at 13 CFR 124.321), is a concern that is owned and controlled by one or more socially and economically disadvantaged individuals entering into a joint venture agreement with one or more business concerns and is considered to be affiliated for size purposes with such other concern(s). The combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract. The majority of the venture's earnings must accrue directly to the socially and economically disadvantaged individuals in the SDB concern(s) in the joint venture. The percentage of the ownership involvement in a joint venture by disadvantaged individuals must be at least 51 percent.

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

"Small disadvantaged business concern," as used in this provision, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR Part 124.

"Women-owned small business concern," as used in this provision, means a small business concern--

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Notice. (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that --

(a) ☐ It has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

(b) ☐ It has, ☐ has not, filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

52.223-1 CLEAN AIR AND WATER CERTIFICATION (APR 1984)

The Offeror certifies that --

(a) Any facility to be used in the performance of this proposed contract ☐ is, ☐ is not listed on the Environmental Protection Agency List of Violating Facilities;

(b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

(End of clause)

52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that--

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons:  
(Check each block that is applicable.)

☐ (i) The facility does not manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313.(b)(1)(A) of EPCRA 42 U.S.C. 11023(b)(1)(A);

[ ] (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

[ ] (iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR section 19.102 of the Federal Acquisition Regulation; or

[ ] (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

#### 52.226-2 HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION REPRESENTATION (MAY 1997)

(a) Definitions. As used in this provision--

"Historically Black College or University" means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority Institution" means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which, for the purpose of this provision, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

(b) Representation. The offeror represents that it--

[ is ] is not a Historically Black College or University;

[ is ] is not a Minority Institution.

#### 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (APR 1998)

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

##### I. DISCLOSURE STATEMENT--COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the



offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

**CAUTION:** In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

(1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: \_\_\_\_\_ Name and Address of Cognizant ACO or Federal Official Where Filed: \_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) Certificate of Previously Submitted Disclosure Statement.

The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: \_\_\_\_\_ Name and Address of Cognizant ACO or Federal Official Where Filed: \_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

(3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than \$25 million (of which at least one award exceeded \$1 million) in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

(4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

**CAUTION:** Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$25 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

## II. COST ACCOUNTING STANDARDS--ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$25 million in awards of CAS-covered prime contracts and subcontracts, or the offeror did not receive a single CAS-covered award exceeding \$1 million. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$25 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$25 million or more.

## III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

( ) YES ( ) NO

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-3 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

## 252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) "Definitions."

As used in this provision --

(a) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for such acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means --

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) "Prohibition on award."

In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) "Disclosure."

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include --

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

#### 252.247-7022 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term supplies is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) Representation. The Offeror represents that it:

\_\_\_\_(1) Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

\_\_\_\_(2) Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

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## CLAUSES INCORPORATED BY FULL TEXT

### 52.202-1 DEFINITIONS (OCT 1995) --ALTERNATE I (APR 1984)

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) "Commercial component" means any component that is a commercial item.

(c) "Component" means any item supplied to the Federal Government as part of an end item or of another component.

(d) "Nondevelopmental item" means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.

(e) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

### 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes



general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

#### 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

#### 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (3) A special Government employee, as defined in section 202, title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

- (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
- (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

#### 52.204-2 SECURITY REQUIREMENTS (AUG 1996) - ALTERNATE II (APR 1984)

(a) This clause applies to the extent that this contract involves access to information classified "Confidential," "Secret," or "Top Secret."

(b) The Contractor shall comply with (1) the Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DOD 5220.22-M), and (2) any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

(e) The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

#### 52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)

(a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.

(b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printed and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

#### 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principles, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

#### 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (SEP 1990)

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

(End of clause)

52.215-2 AUDIT AND RECORDS--NEGOTIATION (JUN 1999)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) Comptroller General--(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition--

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;



(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

#### 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because--

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data were known by the Contractor to be understated before the ``as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the ``as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

#### 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the ``as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data were known by the Contractor to be understated before the ``as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the ``as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or non-current.

#### 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either--

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data--Modifications.

52.215-13 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall--

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (DEC 1998)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

(End of clause)

52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable

share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).

(End of clause)

#### 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall--

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

(End of clause)

#### 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) Exceptions from cost or pricing data. (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable--

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items. (A) If--

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the

acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include--

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

#### 52.216-7 ALLOWABLE COST AND PAYMENT (APR 1998) -- ALTERNATE I (FEB 1997)

(a) Invoicing. The Government shall make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(b) Reimbursing costs. (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only--

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for--

(A) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress and other payments to the Contractor's subcontractors that either have been paid, or that the Contractor is required to pay pursuant to the clause of this contract entitled "Prompt Payment for Construction Contracts." Payments shall be made by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension or other postretirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; Provided, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) Small business concerns. A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though the concern has not yet paid for those items or services.

(d) Final indirect cost rates. (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the cognizant Contracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete (or longer, if approved in writing by the Contracting Officer), the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(5) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(e) Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates--

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) Final payment. (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver--

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except--

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

#### 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)

(a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and



controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) Definitions. As used in this contract (1) Small business concern means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(3) Small business concern owned and controlled by socially and economically disadvantaged individuals and small disadvantaged business concern mean a small business concern that represents, as part of its offer that--

(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

(4) Small business concern owned and controlled by women means a small business concern--

(i) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

(End of clause)

#### 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JAN 1999)

(a) Definition. HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) Evaluation preference. (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except--

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer.

These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) Waiver of evaluation preference. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

{time} Offeror elects to waive the evaluation preference.

(d) Agreement. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

#### 52.219-9 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1999)--ALTERNATE I (JAN 1999).

(a) This clause does not apply to small business concerns.

(b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

"Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

(i) Total dollars planned to be subcontracted;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to HUBZone small business concerns;

(iv) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(v) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, HUBZone, small disadvantaged and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to ensure that small business, HUBZone small business, small disadvantaged and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated)

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether HUBZone small business concerns were solicited and, if not, why not;

(C) Whether small disadvantaged business concerns were solicited and, if not, why not;

(D) Whether women-owned small business concerns were solicited and, if not, why not; and

(E) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

(A) Trade associations;

(B) Business development organizations; and

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through--

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided, (1) the master plan has been approved, (2) the offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g)(1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

(End of clause)

#### 52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

#### 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM-DISADVANTAGED PROGRAM -DISADVANTAGED STATUS AND REPORTING (OCT 1999)

(a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR

52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

- (a) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

*(End of clause)*

#### 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed 50% or the overtime premium is paid for work --

- (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
- (2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
- (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
- (4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall--

- (1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;
- (2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
- (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and
- (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

*(End of clause)*

#### 52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit

the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

(a)(1) The worker is paid or is in an approved work training program on a voluntary basis;

(2) Representatives of local union central bodies or similar labor union organizations have been consulted;

(3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

**52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION.**  
(JUL 1995)

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanics employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and basic records. (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or



subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

#### 52.222-6 DAVIS-BACON ACT (FEB 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions,

including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC

20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable

apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

#### 52.222-11 SUBCONTRACTS (LABOR STANDARDS (FEB 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination-Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

52.222-16 APPROVAL OF WAGE RATES (FEB 1988)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) Segregated facilities, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to ensure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	Goals for female participation for each trade
2.0	6.9

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the --

(1) Name, address, and telephone number of the subcontractor;

(2) Employer's identification number of the subcontractor;

(3) Estimated dollar amount of the subcontract;

(4) Estimated starting and completion dates of the subcontract; and

(5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is Eareckson Air Station, located on Shemya Island near the end of the Aleutian Islands, Alaska.

52.222-26 EQUAL OPPORTUNITY (FEB 1999)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in

every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

#### 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

(a) Definitions. "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform



progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by--

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to ensure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor--

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the

Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to--

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

#### 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

(a) ) Definitions. As used in this clause--

All employment openings includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Veteran of the Vietnam era means a person who--

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

(i) Employment;

(ii) Upgrading;

(iii) Demotion or transfer;

(iv) Recruitment;

(v) Advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and non-veterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State

system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam Era.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

#### 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

#### 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and

veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

## 52.223-2 CLEAN AIR AND WATER (APR 1984)

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401, et seq.).

"Clean air standards," as used in this clause, means--

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the EPA or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with--

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

(b) The Contractor agrees--

(1) To comply with the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List

of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(End of clause)

#### 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

(a) "Hazardous material", as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material	Identification No.
(If none, insert "None")	

_____	_____
_____	_____
_____	_____

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;



(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

#### 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)

(a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)(42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA)(42 U.S.C. 13101-13109).

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

#### 52.223-6 DRUG-FREE WORKPLACE (JAN 1997)

(a) Definitions. As used in this clause --

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to deter- mine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall-- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

- (2) Establish an ongoing drug-free awareness program to inform such employees about--
  - (i) The dangers of drug abuse in the workplace;
  - (ii) The Contractor's policy of maintaining a drug-free workplace;
  - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;
- (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.
- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
  - (i) Taking appropriate personnel action against such employee, up to and including termination; or
  - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.
- (End of clause)

#### 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)

- (a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in section 19.102 of the Federal Acquisition Regulation (FAR); or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

#### 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(End of clause)

#### 52.224-2 PRIVACY ACT (APR 1984)

(a) The Contractor agrees to--

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies--

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and  
(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)(1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)

#### 52.225-11 BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2000)

(a) Definitions. As used in this clause--

Component means any article, material, or supply incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Designated country means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark.

Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan.

Kiribati, Korea, Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda.

Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

Designated country construction material means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

Domestic construction material means--

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Foreign construction material means a construction material other than a domestic construction material.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country construction material means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

(2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: None

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that--

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

(ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) \1\
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Item 1:

Foreign construction material....

Domestic construction material...

Item 2:

Foreign construction material....  
Domestic construction material....

\1\ Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).  
List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.  
Include other applicable supporting information.

(End of clause)

#### 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2000)

- (a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, and Sudan.
- (b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.
- (b) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.
- (End of clause)

#### 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (FEB 2000)

(a) For Department of Defense contracts, this clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause at 52.219-9, Small Business Subcontracting Plan. It does not apply to contracts awarded based on a subcontracting plan submitted and approved under paragraph (g) of the clause at 52.219-9.

(b) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership shall constitute not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(c) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian

organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer shall refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW, MS-334A-SIB, Washington, DC 20245. The BIA will determine the eligibility and notify the Contracting Officer. The 5 percent incentive payment will not be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the equitable adjustment to the prime contract shall be 5 percent of the estimated cost, target cost or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(d) T The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

#### 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold (however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.)

#### 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has



knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at (FAR) 2.101 to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).  
(End of clause)

#### 52.228-1 OFFER GUARANTEE (Sept 1996)

(a) Failure to furnish a offer guarantee in the proper form and amount, by the time set for opening of offers, may be cause for rejection of the offer.

(b) The offeror shall furnish a offer guarantee in the form of a firm commitment, *e.g.*, bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return offer guarantees, other than bid bonds--

(1) To unsuccessful offerors as soon as practicable after the opening of offers; and

(2) To the successful offeror upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the offer as accepted.

(c) The amount of the offer guarantee shall be 20 percent of the offer price or \$3 Million, whichever is less.

(d) If the successful offeror, upon acceptance of its offer by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the offeror, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the offeror is liable for any cost of acquiring the work that exceeds the amount of its offer, and the offer guarantee is available to offset the difference.

(End of provision)

#### 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe, or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of clause)

52.228-15 PERFORMANCE AND PAYMENT BONDS--CONSTRUCTION (SEP 1996)-

(a) Definitions. As used in this clause--

Contract price means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or for indefinite-delivery type contracts, the price payable for the specified minimum quantity.

(b) Unless the resulting contract price is \$100,000 or less, the successful offeror shall be required to furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance Bonds (Standard Form 25): (i) The penal amount of performance bonds shall be 100 percent of the original contract price.

(ii) The Government may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.

(iii) The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(2) Payment Bonds (Standard Form 25-A):

(i) The penal amount of payment bonds shall equal--

(A) 50 percent of the contract price if the contract price is not more than \$1 million;

(B) 40 percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(C) \$2.5 million if the contract price is more than \$5 million.

(ii) If the original contract price is \$5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection shall meet the requirement of subparagraph (b)(2)(i) of this clause.

(iii) The Government may secure additional protection by directing the Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register, or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW., 2nd Floor, West Wing, Washington, DC 20227.

52.230-2 COST ACCOUNTING STANDARDS (APR 1998)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall--

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If

the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

52.232-17 INTEREST (JUNE 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. reproduce, prepare derivative works, distribute copies to the public, and (b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

52.232-18 AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

52.232-22 LIMITATION OF FUNDS (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The

notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause--

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of (i) the amount then allotted to the contract by the Government or, (ii) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of (1) the amount previously allotted by the Government or, (2) if this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equalling the percentage of completion of the work contemplated by this contract.

52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986) - ALTERNATE I (APR 1984)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (JUN 1997)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments. (1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 14th day after the date of the Contractor's payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims),

acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Any other information or documentation required by the contract.

(x) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the

end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) Additional interest penalty. (i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and



(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that--

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except--

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(6)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments. (1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 14<sup>th</sup> day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of

the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f) Third-party deficiency reports. (1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying--

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

#### 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Contractor EFT arrangements. If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of Clause)

#### 52.233-1 DISPUTES. (DEC 1998)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the

Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using -

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

52.233-3 PROTEST AFTER AWARD. (AUG 1996) -- ALTERNATE I (JUN 1985)

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

#### 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

#### 52.236-8 OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

#### 52.236-18 WORK OVERSIGHT IN COST-REIMBURSEMENT CONSTRUCTION CONTRACTS (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control, and approval of the Contracting Officer.

#### 52.236-19 ORGANIZATION AND DIRECTION OF THE WORK (APR 1984)

(a) When this contract is executed, the Contractor shall submit to the Contracting Officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it as additional information becomes available.

(b) Work performance under this contract shall be under the full-time resident direction of (1) the Contractor, if the Contractor is an individual; (2) one or more principal partners, if the Contractor is a partnership; or (3) one or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, the Contractor may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

#### 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(a) Notwithstanding any other clause of this contract--

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.



52.242-3 PENALTIES FOR UNALLOWABLE COSTS. (OCT 1995)

(a) Definition. Proposal, as used in this clause, means either--

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which--

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost which is unallowable, as defined in Part 31 of the FAR, or an executive agency supplement to Part 31 of the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to--

(1) The amount of the disallowed cost allocated to this contract; plus

2) Simple interest, to be computed--

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.).

(g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

(a) The Contractor shall--

(1) Certify any proposal to establish or modify final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) ) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

#### CERTIFICATE OF FINAL INDIRECT COSTS

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief: 1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and 2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm:-----

Signature:-----

Name of Certifying Official:-----

Title:-----

Date of Execution:-----

#### 52.242-13 BANKRUPTCY. (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

#### 52.242-4019 REQUIRED INSURANCE

The Contractor, in accordance with CONTRACT CLAUSE "Insurance--- Work on a Government Installation(FAR 52.228-5)," shall procure and maintain at least the following minimum insurance:

Type	Amount
Workmen's Compensation and Employer's Liability Insurance	\$100,000
General Liability Insurance	\$500,000 per occurrence
Automobile Liability Insurance	
Bodily injury	\$200,000 per person and \$500,000 per occurrence
Property damage	\$ 20,000 per occurrence
Vessel collision liability	\$5,000,000
Vessel Protection and Indemnity Liability	\$5,000,000 or the market value of the property being shipped by vessel, whichever is greater

(Coverages per FAR 28.307-2)

52.243-2 CHANGES--COST-REIMBURSEMENT (AUG 1987) - ALTERNATE III (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the plans and specifications or instructions incorporated in the contract.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

52.244-2 SUBCONTRACTS (AUG 1998) - ALTERNATE I (AUG 1998)

(a) Definitions. As used in this clause--

Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that--

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds--

- (i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or
- (ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
- (e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:
  - Subcontracts expected to exceed \$100,000
  - Sole source subcontracts expected to exceed \$25,000
- (f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:
  - (i) A description of the supplies or services to be subcontracted.
  - (ii) Identification of the type of subcontract to be used.
  - (iii) Identification of the proposed subcontractor.
  - (iv) The proposed subcontract price.
  - (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
  - (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
  - (vii) A negotiation memorandum reflecting--
    - (A) The principal elements of the subcontract price negotiations;
    - (B) The most significant considerations controlling establishment of initial or revised prices;
    - (C) The reason cost or pricing data were or were not required;
    - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
    - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
    - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
    - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

#### 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protege Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its proteges.

#### 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)

(a) Definitions.

"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241)(flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

**52.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (JAN 1986) (DEVIATION)**

(a) Government-furnished property.

(1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

(1) The Contracting Officer may, by written notice,

(i) decrease the Government-furnished property provided or to be provided under this contract or

(ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any--

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use property, if provided under any other contract or lease.
- (c) Title. (1) The Government shall retain title to all Government-furnished property.  
  
(2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.  
  
(3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon--
  - (i) Issuance of the property for use in contract performance;
  - (ii) Commencement of processing of the property for use in contract performance; or
  - (iii) Reimbursement of the cost of the property by the Government, whichever occurs first.
- (4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
- (d) Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.
- (e) Property administration.
  - (1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.
  - (2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.
  - (3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- (g) Limited risk of loss.
  - (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
  - (2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)--
    - (i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(3)(i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage--

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) The contractor shall notify the contracting officer upon loss or destruction of, or damage to, government property provided under this contract, with the exception of low value property for which loss, damage, or destruction is reported at contract termination, completion, or when needed for continued contract performance. The Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of--

(6) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations



under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

(j) Abandonment and restoration of Contractor premises. Unless otherwise provided herein, the Government--

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

#### 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

"Transportation is for the \_\_\_\_\_ and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government."

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

"Transportation is for the \_\_\_\_\_ and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract no. \_\_\_\_\_. This may be confirmed by contacting \_\_\_\_\_."

#### 52.249-6 TERMINATION (COST-REIMBURSEMENT) (SEP 1996) - ALTERNATE I (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if--

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
- (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f) or (h) above or paragraph (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

#### 52.249-14 EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the completion time shall be revised, subject to the rights of the Government under the termination clause of this contract.

#### 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (NOV 1995)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor --

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder, except (effective May 1, 1996) subcontracts for the acquisition of commercial items or components.

52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.
- (c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (Dec 1991)

- (a) *Definition.* "Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.
- (b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of Clause)

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAR 1999)

- (a) *Definitions.* As used in this clause—

(1) "Arising out of a contract with the DoD" means any act in connection with—

- (i) Attempting to obtain;
- (ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

- (1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;
- (2) On the board of directors of any DoD contractor or first-tier subcontractor;

- (3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or
  - (4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.
- (c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.
- (d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—
- (1) Employing a person under a prohibition specified in paragraph (b) of this clause; or
  - (2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.
- (e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—
- (1) Suspension or debarment;
  - (2) Cancellation of the contract at no cost to the Government; or
  - (3) Termination of the contract for default.
- (f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—
- (1) The person involved;
  - (2) The nature of the conviction and resultant sentence or punishment imposed;
  - (3) The reasons for the requested waiver; and
  - (4) An explanation of why a waiver is in the interest of national security.
- (g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.
- (h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of clause)

#### 252.203-7002 DISPLAY OF DOD HOTLINE POSTER (DEC 1991)

- (a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline Posters prepared by the DoD Office of the Inspector General.
- (b) DoD Hotline Posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)

#### 252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

#### 252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION.(MAR 1998)

(a) Definitions.

As used in this clause--

(1) Central Contractor Registration (CCR database means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) Registered in the CCR database means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.



(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://ccr.edi.disa.mil>.

252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)

(a) Definition.

"Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450 (c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

252.209-7000 ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ONSITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 of the Federal Acquisition Regulation, except those for commercial items.

252.209-7003 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (MAR 1998)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 37 U.S.C. 4212(d) (i.e., the VETS-100 report required by Federal Acquisition Regulation clause 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era), it has submitted the most recent report required by 38 U.S.C. 4212(d).

252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

252.215-7000 PRICING ADJUSTMENTS (DEC 1991)

The term "pricing adjustment," as used in paragraph (a) of the clauses entitled "Price Reduction for Defective Cost or Pricing Data - Modifications," "Subcontractor Cost or Pricing Data," and "Subcontractor Cost or Pricing Data - Modifications," means the aggregate increases and/or decreases in cost plus applicable profits.

252.215-7002 COST ESTIMATING SYSTEM REQUIREMENTS (OCT 1998)

(a) "Definition."

"Estimating system" means the Contractor's policies, procedures, and practices for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the Contractor's --

- (1) Organizational structure;
- (2) Established lines of authority, duties, and responsibilities;
- (3) Internal controls and managerial reviews;
- (4) Flow of work, coordination, and communication; and
- (5) Estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

(b) "General."

(1) The Contractor shall establish, maintain, and comply with an estimating system that is consistently applied and produces reliable, verifiable, supportable, and documented cost estimates that are an acceptable basis for negotiation of fair and reasonable prices.

(2) The system should be --

- (i) Consistent and integrated with the Contractor's related management systems; and
- (ii) Subject to applicable financial control systems.

(c) "Applicability". Paragraphs (d) and (e) of this clause apply if the Contractor is a large business and either --

(1) In its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts, totaling \$50 million or more for which certified cost or pricing data were required; or

(2) In its fiscal year preceding award of this contract --

(i) Received DoD prime contracts or subcontracts totaling \$10 million or more (but less than \$50 million) for which certified cost or pricing data were required; and

(ii) Was notified in writing by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) "System requirements."

(1) The Contractor shall disclose its estimating system to the Administrative Contracting Officer (ACO) in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is adequate when the Contractor has provided the ACO with documentation that--

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.

(3) The Contractor shall --

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the ACO on a timely basis.

(e) "Estimating system deficiencies."

(1) The Contractor shall respond to a written report from the Government that identifies deficiencies in the Contractor's estimating system as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall --

(A) Within 30 days, state its agreement in writing; and

(B) Within 60 days, correct the deficiencies or submit a corrective action plan showing proposed milestones and actions leading to elimination of the deficiencies.

(ii) If the Contractor disagrees with the report, the Contractor shall, within 30 days, state its rationale for disagreeing.

(2) The ACO will evaluate the Contractor's response and notify the Contractor of the determination concerning remaining deficiencies and/or the adequacy of any proposed or completed corrective action.

#### 52.219-7003 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR. 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions. Historically black colleges and universities*, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

*Minority institutions*, as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term *small disadvantaged business*, when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(End of clause)

#### 252.222-7000 RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (DEC 1991)

(a) The Contractor shall employ, for the purposes of performing that portion of the contract work in the State of Alaska, individuals who are residents of the State, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract.

(End of Clause)

#### 252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)

(a) "Definitions".

As used in this clause --

(1) "Storage" means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) "Toxic or hazardous materials" means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

(End of clause)

252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES . (MAY 1999)

(a) The Contractor agrees to deliver under this contract only such of the following articles that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico --

- (1) Food;
- (2) Clothing;
- (3) Tents, tarpaulins, or covers;
- (4) Cotton and other natural fiber products;
- (5) Woven silk or woven silk blends;
- (6) Spun silk yarn for cartridge cloth;
- (7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics;
- (8) Canvas products;
- (9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or
- (10) Any item of individual equipment (Federal supply Classification 8465) manufactured from or containing such fibers, yarns, fabrics, or materials.

(b) This clause does not apply --

(1) To supplies listed in FAR section 25.108(d)(1), or other supplies for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico;

(3) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement; or

(4) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if--

(i) The fabric is to be used as a component of an end item that is not a textile product. Examples of textile products, made in whole or in part of fabric, include--

(a) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.

(End of clause)

252.225-7031 SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)

(a) Definitions. As used in this clause--

(1) "Foreign person" means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) "United States person" is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concerns, as determined under regulations of the President.

(b) Certification. By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(End of clause)

252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with part 231 of the Defense FAR Supplement, in effect on the date of this contract.

252.232-7007 LIMITATION OF GOVERNMENT'S OBLIGATION Alternate I (Aug 1993)

(a) Contract line item \_\_\_\_\_ is incrementally funded. The sum of \$ \*\_\_\_\_\_ is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (i) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (i) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (i) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (i) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional

Funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(i) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract	\$ _____
(month) (day), 199x	\$ _____
(month) (day), 199y	\$ _____
(month) (day), 199z	\$ _____

*\* To be inserted after negotiation.*

(End of Clause)

252.234-7001 EARNED VALUE MANAGEMENT SYSTEM (MAR 1998)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the criteria provided in DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO as complying with EVMS criteria (or the Contractor does not have an existing cost/schedule control system that has been accepted by the Department of Defense), the Contractor shall apply the system to the contract and shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(c) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete

coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor-proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the following subcontractors to comply with the requirements of this clause:

(Contracting Officer to insert names of subcontractors selected for application of EVMS criteria in accordance with 252.234-7000(c).)

#### 252.242-7004 MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (SEP 1996)

(a) Definitions. As used in this clause--

(1) Material management and accounting system means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) Valid time-phased requirements means material which is--

Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) Contractor means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(b) General. The Contractor agrees to--

(1) Maintain a material management and accounting system (MMAS) that--

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (f) of this clause.

(c) Applicability. Paragraphs (d) and (e) of this clause apply only if the Contractor--

(1) Is a large business; and

(2) Received, in its fiscal year preceding award of this contract, Department of Defense prime contracts or subcontracts, and their modifications totaling--



- (i) \$70 million or more; or
  - (ii) \$30 million or more (but less than \$70 million), and is notified in writing by the Contracting Officer that paragraphs (d) and (e) apply.
- (d) Disclosure, demonstration, and maintenance requirements. (1) The Contractor shall--
- Disclose its MMAS to the Administrative Contracting Officer in writing; and
- (ii) If requested by the Administrative Contracting Officer, demonstrate that the MMAS conforms to the standards in paragraph (f) of this clause.
- (2) An MMAS disclosure is adequate when the Contractor has provided the Administrative Contracting Officer with documentation which--
- (i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in its MMAS; and
  - (ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the MMAS.
- (3) An MMAS demonstration is adequate when the Contractor has provided the Administrative Contracting Officer--
- (i) Sufficient evidence to demonstrate the degree of compliance of its MMAS with the standards at paragraph (f) of this clause; and
  - (ii) Identification of any significant deficiencies, the estimated cost impact of the deficiency, and a comprehensive corrective action plan.
- (4) The Contractor shall disclose significant changes in its MMAS to the Administrative Contracting Officer within 30 days of implementation.
- (5) If the contractor desires the Government to protect such information as privileged or confidential, the Contractor shall--
- (i) Notify the Government representative to whom the information is submitted, i.e., the ACO, or the auditor; and
  - (ii) Ensure an appropriate legend is on the face of the document(s) at the time of submission.
- (e) Deficiencies. (1) If the Contractor receives a report which identifies deficiencies in its MMAS, the Contractor agrees to respond as follows--
- (i) If the Contractor agrees with the report findings and recommendations, the Contractor shall--
- (A) Within 30 days, state its agreement in writing; and
  - (B) Within 60 days, correct the deficiencies or submit a corrective action plan.
- (ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall, within 30 days, state its rationale for each area of disagreement.
- (2) The Administrative Contracting Officer shall evaluate the Contractor's response and notify the Contractor of the--
- (i) Determination concerning remaining deficiencies;
  - (ii) Adequacy of any proposed or completed corrective action plan; and

(iii) Need for any new or revised corrective action plan.

(f) MMAS standards. MMAS systems shall have adequate internal accounting and administrative controls to ensure system and data integrity, and comply with the following:

(1) Have an adequate system description including policies, procedures, and operating instructions which comply with the Federal Acquisition Regulation and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions--

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall demonstrate that--

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions such as excess/residual inventory as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall demonstrate that--

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances which will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions--

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411-50(b). Consistency shall be maintained across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The "loan/pay-back technique" means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the Administrative Contracting Officer. When the technique is used, the Contractor shall have controls to ensure--

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

- (D) The cost of the replacement part is charged to the borrowing contract;
- (8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (b)(2) and (7) of this clause) to ensure that--
- (i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;
  - (ii) Inventories retained for requirements which are not under contract are not allocated to contracts; and
  - (iii) Algorithms are maintained based on valid and current data;
- (9) Notwithstanding FAR 45.505-3(f)(1)(ii), have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (f)(1) through (8) of this clause. Government furnished material shall not be--
- (i) Physically commingled with other material; or
  - (ii) Used on commercial work; and
- (10) Be subjected to periodic internal audits to ensure compliance with established policies and procedures.
- (End of clause)

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

-----  
(Official's Name)

-----  
(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to---

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

252.245-7001 REPORTS OF GOVERNMENT PROPERTY (MAY 1994)

(a) The Contractor shall provide an annual report --

(1) For all DoD property for which the Contractor is accountable under the contract;

(2) Prepared in accordance with the requirements of DD Form 1662, DoD Property in the Custody of Contractors, or approved substitute, including instructions on the reverse side of the form;

(3) In duplicate, to the cognizant Government property administrator, no later than October 31.

(b) The Contractor is responsible for reporting all Government property accountable to this contract, including that at subcontractor and alternate locations.

(End of clause)

252.246-7000 MATERIAL INSPECTION AND RECEIVING REPORT (DEC 1991)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(End of clause)

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (NOV 1995)

(a) Definitions. As used in this clause --

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract. However, effective May 1, 1996, the term does not include a supplier, materialman, distributor, or vendor of commercial items or commercial components.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine

tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall employ U.S.-flag vessels in the transportation by sea of any supplies to be furnished in the performance of this contract. The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that --

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(c) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum --

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(d) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information --

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

(e) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief --

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL		

(f) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(g) The Contractor shall include this clause, including this paragraph (g) in all subcontracts under this contract, which exceed the small purchase limitation of section 13.000 of the Federal Acquisition Regulation.

#### 52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS (EFARS 52.249-5000)

Actual costs will be used to determine equipment costs for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a terminations settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

- (1) Actual costs for each piece of equipment, or groups of similar serial or series of equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.
- (2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.
- (3) Recorded job costs adjusted for unallowable expenses will be used to determine equipment operating expenses.
- (4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11)
- (5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate.

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## **SPECIAL CONTRACT REQUIREMENTS, GENERAL**

**1.0 MULTIPLE NOTICES TO PROCEED.** Due to intermittent funding, this contract shall have multiple Notices to Proceed (NTP) with resultant multiple completion dates. For each NTP, the Contractor shall begin work within ten (10) calendar days after he receives the Notice to Proceed, shall prosecute said work diligently, and shall complete all work identified in the NTP in a 'ready-for-use' condition not later than the date set out in the completion schedule (See para. 1.1 of Section 00010). The time stated for completion shall include final cleanup of the premises. A contract award based on this solicitation is subject to a Presidential decision to proceed with this preliminary phase of the NMD program. Similarly, a full Notice to Proceed will not be issued until after the presidential decision is made to proceed with this preliminary phase of the NMD Program.

**2.0 WAGE RATE DETERMINATION.** Wage rates affecting this project are applicable to all work under the contract and to the county in which the work is performed. Copies of the rates can be obtained from Attachment No. 6 – GENERAL WAGE DECISIONS.

**3.0 LABOR CONDITIONS APPLICABLE TO TEMPORARY FACILITIES.** It is the position of the Department of Defense that the Davis-Bacon Act, 40 U.S.C. 276a, applies to wages paid for work at temporary facilities that support construction--i.e., those facilities located off the immediate construction site but set up exclusively to furnish required materials for a construction project on the work site. Those facilities include, but are not limited to, batch plants, sandpits, rock quarries, and similar operations. The contract clause, "Payrolls and Basic Records," is applicable to such operations.

**4.0 CERTIFICATES OF COMPLIANCE.** The Contract shall provide three copies of any certificates required for demonstrating materials' proof of compliance with the specification requirements. Each certificate shall be signed by an official authorized to certify on behalf of the manufacturing company and shall contain the name and address of the Contractor, the project name and location, and the quantity and date or dates of shipment or delivery to which the certificates apply. Copies of laboratory test reports submitted with certificates shall contain the name and address of the testing laboratory and the date or dates of the tests to which the report applies.

**5.0 SUBMITTALS** (ER 415-1-10, 30 May 1995). Within 30 days after receiving the Notice to Proceed, the Contractor shall complete and submit to the Contracting Officer, in triplicate, ENG Form 4288 listing all submittals and dates. An ENG Form 4288 shall be submitted for all NTP's issued. In addition to those items listed on ENG Form 4288, the Contractor shall furnish submittals for any deviation from the plans or specifications. The scheduled need dates for each item must be recorded on the document for control purposes. In preparing Form 4288, the Contractor will allow adequate time (minimum of 30 days) for review and, only when stipulated, approval and possible resubmittal. Scheduling the need dates shall be coordinated with the approved progress schedule. The Contractor's Quality Control representative shall review the listing at least every 30 days and take appropriate action to maintain an effective system. Copies of the updated or corrected listing shall be submitted to the Contracting Officer at least every 60 days in the quantity specified. Section 01330 includes an ENG Form 4288 that lists submittalss



from the individual specifications that the Contractor shall submit to the Contracting Officer, as indicated in the contract requirements.

**6.0 EARECKSON AIR STATION PHYSICAL DATA.** Data referred to below are furnished for the Contractor's information.

**6.1 Physical conditions** shown on the drawings and in the specifications are the result of site investigation.

**6.2 Location:** Eareckson AS is located on Shemya Island, AK, near the extreme western end of the Aleutian Islands and is approximately 1500 air miles from Anchorage, AK.

**6.3 Transportation:** Shemya Island is inaccessible at times due to storms, high winds, and general bad weather conditions in this area.

a. Air: Government aircraft and Government-contracted charter flights are available from Elmendorf AFB, AK.

b. Water: Commercial shipping services are available in Seattle, Washington, and Anchorage, Alaska.

**6.4 Existing Facilities:** The existing dock in Alcan Harbor is available for the Contractor's use on an as-is, where-is basis. The Contractor may use the airfield on Shemya for privately owned or chartered aircraft; however, such use will require prior coordination/approval with the 611<sup>th</sup> Program Management Office (PM-E). Payment of any fees for using the field will be the Contractor's responsibility and will be a reimbursable expense.

**6.5 Communication Service:** Direct telephone service to Anchorage is available. The Contractor shall make his own arrangements for using such facilities. The Government does not guarantee the adequacy or efficiency of the service or the number of telephones that can be assigned to the Contractor.

**6.6 Weather Data:** A climatological summary sheet for Shemya Island is included in-01015, Special Items.

## **7.0 ACCESS AUTHORIZATION AND PERSONNEL IDENTIFICATION REQUIREMENTS.**

**7.1** Before departing for the installation, the Contractor shall obtain clearances for all personnel who will disembark at the installation and who will require access, which includes company officials, superintendents, foremen, workmen, technical representatives, and airline employees working for the Contractor or for any subcontractor, vendor, or supplier.

**7.2** The Installation Commander is authorized to refuse access to any person not cleared in accordance with the following procedure:

**7.2.1** The Contractor shall obtain clearances from the Clearance Officer, U.S. Army Engineer District, Alaska, located in the Contract Administration Branch, Construction Division, of the

District Engineer Building 21-700 on Elmendorf AFB, AK. Clearances may be obtained by telephone (753-2768). The following information must be furnished at least 7 days before each person requiring access travels to the site.

- (a) Complete name and aliases
- (b) Date and place of birth
- (c) Citizenship (If naturalized, date, place and certificate number. If not U.S. citizen, then give work permit number.)
- (d) Social Security Number
- (e) Name of specific installation where employee will work
- (f) Estimated time of arrival and number of days
- (g) Government contract number
- (h) Brief description of work to be performed
- (i) Billeting and/or messing requirements
- (j) Employee's job title and employer
- (k) Chartered aircraft information:
  - 1. Type of aircraft
  - 2. Tail number of aircraft
  - 3. Company from which leased

**7.2.2** Name and telephone number of a Contractor person to be contacted in the event the installation cannot be visited on the date requested.

**7.2.3** Prior to beginning work at the installation, the Contractor shall provide the Contracting Officer, by letter to the attention of the Clearance Officer, the names of the general superintendent and his principal assistant who will be stationed at the installation. This letter will include for each individual the data listed in paragraph 7.2.1 (a) through (j) above. The Installation Commander will require the Contractor's superintendent or his principal assistant verify that those personnel who seek admittance are actually employed by the Contractor.

**7.2.4** If the Contractor hires an individual from the vicinity of the installation, and it is impractical to follow the normal clearance/access procedures, the Contractor's superintendent may furnish the information required by paragraph 7.2.1 above directly to the Installation Commander who will coordinate the clearance with his visitor control point.

## **8.0 UNUSUALLY SEVERE WEATHER.**

**8.1** The following schedule of anticipated monthly adverse weather delays for Shemya Island is based on National Oceanic and Atmospheric Administration. The Contractor's progress schedule must reflect these anticipated weather delays in all weather dependent activities.

### **Monthly Anticipated Adverse Weather Delay Work Days based on a 5-Day Work Week**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	5	3	2	1	2	6	11	7	13	14	8

**8.2** After acknowledging the Notice to Proceed and continuing throughout the contract, the Contractor shall record on the daily Contractor Quality Control (CQC) report, adverse weather occurrences and the resulting impact to scheduled work.

**9.0 LOGISTICAL REQUIREMENTS.** Transportation of equipment, personnel, materials, and supplies at Eareckson AK, must be arranged by the Contractor with the approval of the Government. Bulk shipments of these items must use barge traffic. For some items, it will be necessary to stockpile to assure continuous construction.

**10.0 ACCOMMODATIONS FOR GOVERNMENT INSPECTORS.** See Section 01015 – Special Items.

**11.0 SITE SECURITY.** See Section 01760 – Site Security and Classified Materials Security Plan.

**12.0 SPECIAL SAFETY REQUIREMENTS.** The Safety and Health Requirements Manual, EM 385-1-1 (3 Sep 1996) is amended as indicated below. Copies of the manual can be ordered from the Superintendent of Documents, Government Printing Office, Washington DC, phone 202-512-1800, FAX 202-512-2250, e-mail: [www.access.gpo.gov](http://www.access.gpo.gov).

**12.1** Paragraph 16.C: Add new paragraphs 16.C.21 and 16.C.22.

16.C.21. During personnel handling operations, load and boom hoist drum brakes, swing brakes, and locking devices such as pawls or dogs shall be engaged when the occupied platform is in a stationary working position.

16.C.22. During personnel handling operations, the load hoist drum shall have a system or device on the power train other than the load hoist brake, which regulates the lowering rate of speed of the hoist mechanism (controlled load lowering). Free fall is prohibited.

**12.2** Paragraph 21.A.15: Add new paragraph 21.A.15.d.

d. Standard guardrails shall be installed on all intermediate floors and roofs, including flat roof areas more than 6 feet above adjacent areas, during construction or rehabilitation of the buildings. The use of safety nets and safety belts with lifelines may be substituted on pitched roofs.

**13.0 SECURITY CLASSIFICATION – DD 254.** The security classification is For Official Use Only (FOUO).

**14.0 CONTRACTOR-PREPARED NETWORK ANALYSIS SYSTEM .**

**14.1** The Contractor shall prepare a progress chart that consists of a network analysis system (NAS) as described below. The Contractor is responsible for scheduling construction. Contractor management personnel shall actively participate in developing the network logic

diagram so that intended sequences and procedures are clearly understood. The Contractor shall provide the NAS in either Arrow Diagram Method (ADM) or Precedence (PDM) format. The NAS data shall be provided to the Government in PRIMAVERA format to match existing systems. (See paragraph 19.6.2 for a more detailed description.) The network diagram required at the initial schedule submission shall depict the order and interdependence of activities and the method by which the work is to be accomplished. Conditions of submittal are:

- a. The diagram shall show a continuous activity flow from left to right. The activity or event numbers, description, duration, and value shall be shown on the diagram.
- b. The diagram shall show dates for project start, any milestones required by the contract, and contract completion.
- c. The critical path shall be clearly identified. This report shall correlate directly with the Cost Performance Report (CPR), Budgeted Cost of Work Performed (BCWP) Values.
- d. The NAS diagram shall include submittal, review, procurement, fabrication, delivery, installation, start-up, and testing of special or long lead-time materials and equipment.
- e. Government and other agency activities shall be shown. These include, but are not limited to: Notice to Proceed, submittals/approvals, inspections, and utility tie-in for phasing requirements.

**14.2** Within 10 days after acknowledging the Notice to Proceed, the Contractor shall provide a preliminary network diagram for approval, defining the Contractor's planned operations for the first 60 days. ~~Payment under the preliminary schedule will not be made beyond 60 days from the Notice to Proceed.~~

**14.3** The initial NAS shall be submitted within 40 calendar days after Notice to Proceed. It shall provide (1) a reasonable sequence of activities, which represent work through the entire project and (2) a reasonable level of activity detail. The schedule interval shall extend from Notice to Proceed through the contract duration to the contract completion date. Completion of the last activity in the schedule shall be constrained by the contract completion date such that if the projected finish of the last activity falls after the contract completion, then the float calculation shall reflect negative float. Interim milestone dates specified shall be so constrained also.

Acceptance of the NAS ~~Progress payments~~ will be withheld until the Contractor submits an approvable schedule.

**14.4** The Contractor shall submit one reproducible and five copies of the network diagram at the initial submittal and three copies of the specified reports at the initial and every monthly update throughout the life of the project. The format of the reports shall contain: Activity Number(s), Activity Description, Original Duration, Remaining Duration, Early Start Date, Late Start Date, Early Finish Date, Late Finish Date, and Total Float. Precedence schedule reports shall include and display preceding and succeeding activities. Cost and/or Earned-value reports shall contain Estimated Earned Value, Percent Complete (based on cost), and Earnings to Date. Report formats are as follows:

a. Logic Report: This report shall list all activities sorted according to activity number. Activities shall be printed in ascending order of activity number. Any standard report, which lists activities including restraints in this manner, is acceptable.

b. Criticality Report: This report shall list all activities sorted in ascending order of total float. Activities which have equal values of total float shall be listed in ascending order of Early Starts.

c. Cost or Earned-value Report: This report shall compile the Contractor's total earned value on the project from the Notice to Proceed until the most recent monthly progress meeting based on agreed progress between the Contractor and the Contracting Officer. Provided that the Contractor has submitted a complete schedule update, this report shall serve as the basis for determining Contractor payment. Activities shall be grouped by offer item and then sorted by activity number(s). This report shall subtotal all activities in an offer item and provide an offer item percent complete and then total all offer items to provide a total project percent complete.

d. Other sorted reports or curves may be required as project requirements dictate; however, the total number should be limited.

**14.5** A monthly meeting shall be conducted onsite, attended by the Contractor's project manager and appropriate Contracting Officer's representatives. During this meeting, the Contractor shall describe, on an activity-by-activity basis, all proposed revisions and adjustments to the NAS that reflect the current status of the project. The Contracting Officer's representative shall approve activity progress, proposed revisions and adjustments, and the use of any optional calculations. The following shall be addressed:

a. The actual start and actual finish dates for all activities in progress or completed as appropriate.

b. The estimated remaining duration for each activity in progress. Progress calculations must be based on remaining duration for each activity and be in an approved calculation mode.

c. The earned value for each activity started but not completed. Payment shall be based on cost of completed activities plus cost to date of in-progress activities.

d. All logic changes pertaining to change orders, on which a Notice to Proceed has been issued, Contractor proposed changes in activity sequence or durations, and corrections to schedule logic to avoid out of sequence progress.

**14.6** Following the monthly progress meeting, the Contract shall submit, not later than 10 working days after the meeting, a complete update of the NAS that reflects the progress, revisions, and adjustments agreed upon at the meeting. However, approval of this update is subject to accurate entry of information agreed upon at the meeting. Actual starts and finishes, remaining duration, or percent complete shall not be automatically updated by default dates contained in the many CPM scheduling software systems, except that early start for an activity which could start prior to the update but has no actual start shall default to the data date of the update. Activities, which have posted progress without predecessor activities being completed,

shall be allowed only on a case-by-case approval of the Contracting Officer's representative who may require logic changes to correct all out of sequence progress.

**14.7** A narrative report shall be provided with each update of the NAS. This report shall include (1) a description of activities and progress along the four most critical paths; (2) a description of current and anticipated problem areas or delaying factors and their impact; and (3) an explanation of the corrective actions taken. Only modifications that have been authorized and approved by the Contracting Officer shall be included in the schedule submission. The narrative report shall specifically reference, on an activity-by-activity basis, all changes made since the previous period and relate each change to documented, approved schedule changes. This report, along with the progress update above, shall provide the basis for determining the Contractor's progress on the currently approved NAS update. ~~payment request, and the Contractor shall be entitled to progress payments determined from the currently approved NAS update.~~ If the Contractor fails or refuses to furnish the information and NAS data which, in the sole judgment of the Contracting Officer, is necessary for verifying the Contractor's progress, the Contractor shall be deemed not to have provided a progress payment estimate and progress update ~~payment will not be made.~~

**14.8** The Contractor shall prepare proposed NAS revisions for all contract changes and submit them to the Contracting Officer's representative. The revisions shall include a narrative listing the affected activities, a statement of the expected overall impact of the change proposed, and a sub-network of the affected diagram area. When agreed upon by the Contracting Officer's representative, the change logic and durations shall be used in analyzing the overall project. The impact of the change shall determine the schedule impact on the modification. When a Notice to Proceed with changes must be issued prior to settlement of price and/or time, the Contractor shall submit the same revisions for concurrence by the Contracting Officer's representative prior to inclusion in the NAS. If the Contractor fails to submit or include such revisions within 30 days of the partial Notice to Proceed, the Contracting Officer's representative will furnish the Contractor suggested logic and/or revised durations to be entered in the NAS. If the Contractor has any objections to the data furnished by the Contracting Officer, he shall advise the Contracting Officer promptly of his objections and submit a written counter plan. However, the Contractor shall continue to use the revisions by the Contracting Officer until such time as alternate data is approved. If the Contractor fails to submit his counter plan within 20 days from the date the suggested revisions were furnished by the Contracting Officer, the Contractor will be deemed to have concurred with the Contracting Officer's suggested logic/duration time changes.

**14.9** In the event the Contractor requests an extension of the contract completion date for any other contractual reason, he shall furnish justification, as the Contracting Officer deems necessary, to support a determination of his right to a time extension under the provisions of the contract. In such event, the schedule revisions must clearly show that the Contractor has fully used all available float time for the work involved with the request. The Contracting Officer may find cause to extend the contract completion date in the absence of a request by the Contractor when, in the Contracting Officer's judgment, it is equitable.

**14.10** Neither the contractor nor the government shall consider float, available in the schedule at any time, for their exclusive use.

**14.11** The Contractor shall use the activity coding structure defined in the Standard Data Exchange Format (SDEF) in ER 1-1-II, Appendix A. A data disc shall be provided in the "Scheduling System Data Exchange Format." The automated scheduling system used by the Contractor shall be capable of providing all requirements of this specification. The Contract should use as many data disk(s) as required in the "Standard Data Exchange Format" to submit the initial schedule, monthly updates, and all NAS revisions or requests for revision.

**15.0 COMMUNICATION SECURITY.** All communications with DoD organizations are subject to COMSEC review. Contractor personnel shall be aware that telecommunications' networks are continually subject to intercept by unfriendly intelligence organizations. DoD has authorized the military departments to conduct COMSEC monitoring and recording of telephone calls originating from or terminating at DoD organizations. Therefore, civilian Contractor personnel are advised that any time they place a call to or receive a call from Alaska District offices or Resident Engineer offices located on military installations, they are subject to COMSEC procedures. The Contractor will assume the responsibility for ensuring wide and frequent dissemination of the above information to all employees dealing with official DoD information.

**16.0 OVERTIME.** Overtime shall require prior approval by the Contracting Officer. The request shall include the number of hours by discipline, the time frame, and the justification.

**17.0 SIGN.** When work begins on this project, the Contractor shall furnish and erect the temporary sign in the location selected by the Contracting Officer near the project site. The Contractor shall maintain the sign in good condition through the project construction period. Upon completion of the project the Contractor shall remove the sign from the premises. The project sign shall conform to Standard Drawing OD15-9A12 and OD15-9A23 bound herein. A decal of the "Engineer Castle" will be furnished the Contractor upon request.

**18.0 WRITTEN NOTIFICATION.** The Contractor shall provide written notification to the Director, Office of Federal Contract Compliance Programs, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the -

- a. Name, address, and telephone number of the subcontractor;
- b. Employer identification number of the subcontractor;
- c. Estimated dollar amount of the subcontract;
- d. Estimated starting and completion dates of the subcontract; and
- e. Geographical area in which the subcontract is to be performed.

**18.1** As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is considered to be the area from which the workforce is drawn.

## **19.0 COMPUTER SYSTEMS.**

**19.1** The Contractor shall provide for the electronic management and control of all project-generated data and documents. The Contractor shall provide this data to a central server in order for all Government and Contractor personnel to have easy access to these documents. The Contractor shall begin this effort within 60 calendar days after partial notice to proceed. In order

to manage these documents, the Contractor shall have on site, as a minimum, a computer system with appropriate monitors, laser printers, database, library, and word-processing software, and networked to other project management systems. The Contractor shall provide a microfiche reader/printer capable of reading standard microfiche aperture cards (positive and negative). The Government will approve this system.

**19.2** The Contractor shall provide, install, and maintain a dedicated computer system and network to delineate, print, and maintain project status for progress reporting. Within 30 days after partial notice to proceed, the Contractor shall furnish an integrated computer system to the Government for use in monitoring and tracking the project progress. The computer system shall consist of a minimum of 8 personal computers: 3 installed at Shemya; 2 installed at Fort Richardson; and 3 installed at Huntsville (one each at Huntsville Center COE, Boeing Company, and JPO). The Contractor shall provide and install software and maintain each computer system, including required interfaces with Government systems, throughout the duration of the contract. These computers shall be of a size and speed to easily meet the requirements of this contract and shall be approved by the Government before installation.

**19.3** The Contractor shall connect the Government's computer systems to the Contractor's systems in such a way that any change that the Contractor makes to its systems will be immediately and electronically available to the Government. The computer equipment shall be located in the Government's offices for the life of the contract.

**19.4** Schedule Data Updates. The Contractor shall provide microcomputer software and data updates as required to the Government in a manner suitable to the Government. The periodic updates may be by compact discs. The Contractor shall provide training for Government personnel in the operation and development of the systems.

**19.5** The Contractor shall use the National Archive and Record Administration Bulletin 91-4 as a guide to develop proper procedures for turn-in and retention of valuable project records.

**19.6** All project control and EVMS data shall be maintained digitally. Therefore, the Contractor shall develop, implement, and maintain a Contractor-Integrated Technical Information System (CITIS) to generate, integrate, store, view, and retrieve digital program data on-line. All program data including the IMP and IMS, technical data, EVMS, and logistics information shall be available on the CITIS continuously and in real-time. The CITIS shall provide for data configuration management indexing and archiving and shall also provide the capability to review and comment on data. A commercial, non-proprietary CITIS is required.

19.6.1 CITIS capabilities shall include the means to ensure only authorized access. The CITIS shall provide for simultaneous access by at least 30 Government users, plus additional contractor users. The CITIS shall be operational 75 days after contract award and available for the life of the contract including exercised options and subsequent modifications.

19.6.2 To match existing Government systems, the Contractor shall use PRIMAVERA, Version 3.0 or higher for the EVMS management tool. This tool must provide a calculated critical path, must interface with Open Plan Professional 2.5 or higher, and must be resource-loaded (materials, dollars, hours, personnel, equipment, heated storage, unheated storage, port requirements, GFE/MHE requirements, etc.). Some customization of a conversion tool may be



required to import PRIMAVERA into Open Plan Professional (OPP). In addition to CITIS access, prescribed submission of data and reports by Electronic Data Interchange (EDI) is required. The ANSI X12 will be used for EDI transmission.

**20.0 DAILY WORK SCHEDULES.** In order to closely coordinate work under this contract, the Contractor shall prepare for and attend a weekly coordination meeting with the Contracting Officer and Using Service, at which time, the Contractor shall submit for coordination and approval his proposed daily work schedule for the next 2-week period. Required temporary utility services, time and duration of interruptions and protection of adjoining areas shall be included with the Contractor's proposed 2-week work schedule. At this meeting, the Contractor shall also submit his schedule of proposed dates and times of all preparatory inspections to be performed during the next 2 weeks. The work items listed on the proposed 2-week schedule are to be keyed to the NAS by activity number and description for each activity anticipated to be performed during the next 2-week period. Coordination by the Contracting Officer relative to these schedules will be accomplished during these weekly meetings.

## **21.0 WORK AUTHORIZATION DOCUMENT.**

**21.1** The Work Authorization Document (WAD) system as prescribed and explained herein will be implemented under this contract for joint Government-contractor management and control of costs. The WAD system will be implemented in the initial work phase. The Contracting Officer will issue a numbered WAD for major or separable cost features of the work to be undertaken. The total estimated cost shall consist of contract line item numbers (CLIN's) 0001AA, 0001AB, and 0001AC. A total estimated cost at completion will be jointly agreed upon between the Contracting Officer and the Contractor for each WAD. The Contractor will prepare necessary Work Orders (WO) for advance approval of the Contracting Officer for work execution included in each WAD. Each WO will include a budget cost estimate and will identify by description and number the WAD under which the work is to be accomplished. The cumulative cost of approved WO shall not exceed the total budget amount of the WAD under which they are issued, without prior approval of the Contracting Officer. The total cumulative cost of the WAD shall not exceed the contract amount without an adjustment to the contract amount.

**21.2** Government and Contractor management will meet on a monthly basis, or more frequently if directed by the Contracting Officer, for affecting cost control. The Contractor will provide the records for the meeting which depict the total budget for each WAD and the cumulative actual cost of all approved WO under each WAD. The Contractor will submit to the Contracting Officer for approval his proposed format for cost control management under the WAD system described herein. See attachment 1 for WAD Breakdown.

## **22.0 CONTRACT MANAGEMENT PROCEDURES.**

**22.1** Attachment 2 to this contract contains an outline of possible Contract Management Procedures that will be negotiated and agreed upon after the award of the contract.

**22.2** Contract Management Procedures are a means for the Contractor and Government to have in-place procedures on how a contract is going to be managed. The list provided in Attachment 2 is provided as a guide and is not necessarily all inclusive of all procedures that should/could be

detailed in the CMP. It is not a requirement to format any existing contractor policies to match the order of the following CMP's.

**22.3** The offerors shall not submit specific Contract Management Procedures with their proposals. Only the information required by Section 00100 will be submitted with the proposal; however, information contained in this section may form the basis of a particular Contract Management Procedure.

**22.4** The selected firm will be required to submit actual Contract Management Procedures for negotiation and agreement after contract award. The finalized Contract Management Procedures will be incorporated into the contract and signed by both the Contractor and the Contracting Officer.

**23.0 AWARD FEE PLAN.** The procedures for award fee evaluation shall be in accordance with the attached Award Fee Plan. See attachment 3 for the Award Fee Plan.

**24.0 WORK BREAKDOWN STRUCTURE.** The Contractor-developed work breakdown structure (WBS) to level 4 (site, facility, system, and subsystem), with dictionary, shall interface with the general work breakdown structure used by the Government as shown in attachment 4. Use Military Standard (MIL STD) 881B for guidance only. For cost proposal purposes only, a WBS Level 3 with abbreviated dictionary may be used.

~~**25.0 INCORPORATION OF PROPOSAL INTO CONTRACT.** Information submitted as part of the proposal shall be included as part of the contract documents and shall be binding upon the Contractor (Successful Offeror). In case of conflict between the proposal and the contract requirements, the contract requirements will govern. Reserved.~~

**26.0 ORDER OF PRECEDENCE.** Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. From time to time, the Contracting Officer shall furnish such detailed drawings and other information as considered necessary, unless otherwise provided.

**27.0 SMALL BUSINESS GOALS.** Offerors should strive to place subcontracts with the following goals: 61.4% of the work subcontracted should be small businesses including 9.1% small-disadvantaged businesses, and 5% women-owned businesses. An Indian tribe or tribally owned corporation does not have to qualify as a small business concern to be counted toward the Small Disadvantaged Business Goals.

**28.0 CONTRACT TYPE CONVERSION.** The Government contemplates a Cost Plus Award Fee Contract award for the site contained in this effort. However, the Government reserves the right to seek an agreement from the contractor, after sufficient notice and a request for a proposal, to convert to a Fixed Price Contract for any or all portions of this effort if deemed in the best interest of the Government.

**29.0 DISMISSALS.** ~~The~~he contractor shall be responsible for maintaining the order of its employees on the site. The contracting officer may require the contractor to dismiss from work hereunder such employee or employees as the contracting officer deems incompetent, careless, insubordinate or whose continued employment is deemed inimical to the public interest by the contracting officer. Before dismissal, concurrence will be required from the Contractor's Program Director.

**30.0 PASS-THROUGH COST.** All equipment, spare parts, utilities, and consumables shall be purchased as non-fee-bearing purchase cost (pass-through) and shall not be subject to fee. Similarly, all contractor travel and costs associated with the movement, storage, and sale of personal effects, household goods, and vehicles, as allowed by the FAR 31.205-35, shall be as a non-fee-bearing purchase cost and shall not be subject to fee. However, the contractor will be entitled to recover allowable overheads and/or General and Administrative expenses in accordance with its disclosed cost accounting practices. This paragraph limits only application of profit on such expenditures.

**31.0 VIDEO SUPPORT.** The Contractor shall provide video teleconference (VTC) capability in a central conference room on Shemya Island for video interface between Contractor and Government. The Contractor shall also provide remote digital video camera capability at the x-band radar and the power plant. The cameras at these locations shall have zoom lenses with pan capabilities accessible and controllable from the Internet with password protection.

**32.0 U.S. CITIZENSHIP REQUIREMENTS.** Based on DFARS 252.222-7000, the Contractor is required to hire qualified Alaska residents in performance of this work. Ordinarily individuals working on Shemya will be U.S. citizens. Employment of foreign nationals on Shemya will require state department approval before begin of work and a clearance from the Government.

**33.0 GOVERNMENT SUPPORT ACTIVITIES/COSTS.** These costs involve supporting the Government's effort on the XBR rather than construction of the XBR. These include providing vehicles, computers support systems, video camera monitoring, and Government personnel lodging and meals.

**34.0 PLANNING.** Any planning done in advance to accelerate the construction effort as defined by drawings and specifications.

**35.0 PUBLIC INFORMATION ACTIVITIES.** The Contractor shall completely coordinate public information activities with the Government. Under no circumstances shall the Contractor make information releases to the public without first receiving Government permission. The Government reserves the right to function as the official public affairs office under this contract. The Contractor is not authorized to communicate with any individual, agency, or organization regarding any facet of the Department of Defense (DoD) programs without the express authorization. This includes, but is not limited to, advertisements, news releases, brochures, viewgraphs, public meetings, and annual reports. All interactions with the public, media, regulators, or legislators regarding the Contractor's role in the DoD's programs shall be cleared in advance. The Contractor shall adhere to the DoD policy of speaking with one voice. The Contractor shall not discuss Government matters nor shall it address any other present or

potential technologies. The Contractor shall speak strictly about its role in constructing safe and reliable facilities.

## ATTACHMENT 1

### WORK AUTHORIZATION DOCUMENT (WAD) (See Section 00800, paragraph 21.0)

#### X-Band Radar at Shemya, Alaska

<u>3.03.5.1</u>	<u>Tactical Facilities</u>
<u>3.03.5.1.1</u>	<u>Radar Operations Facility</u>
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**ATTACHMENT 2**  
**CONTRACT MANAGEMENT PROCEDURES**  
(See Section 00800, paragraph 22.0)

As a minimum, the following items should be addressed within the CMP's. The Government may add others as their importance develops.

**1. Personnel and Company Policies**

- a. Sick leave and vacation leave
- b. Temporary employees
- c. Timekeeping for field and home office
- d. Employee morale/safety programs
- e. Training – direct vs. indirect
- f. Weekend travel home
- g. Company holidays vs. Government holidays
- h. Travel and crew pay on inclement weather days
- i. Relocation costs
- j. Severance pay
- k. Overtime
- l. Rental car policies and corporate accounts
- m. Per diem (hotel, meals, and incidentals) follow Joint Travel Regulations
- n. Cost reimbursement subcontracts or teaming partners follow the Contractor's policies

on the above

- o. Extreme weather work plan
- p. Which persons at home office are considered direct charge and under what circumstances
- q. How are cost proposals costed, direct or indirect?
- r. Reserve labor force usage for rotational assignments
- s. Apprenticeship program usage
- t. Which personnel policies will assure compliance with local, state, and federal labor laws

**2. Cost-Plus-Base Fee and Award Fee**

- a. Suggestions on making award fee process a win-win process
- b. Fee bearing changes, need general characterization

**3. Procurement Plan and Procedures**

- a. Describe how competition is achieved for subcontracts
- b. Describe sole source procurement process and approvals required
- c. Describe a plan for dealing with geographic areas with limited subcontractor availability
- d. Subcontractor management
- e. Subcontractor consent packages (for approval by the government)

**4. Property/Materials Management Plan**

- a. Describe the receiving, warehousing, stockpiling, tracking and disposition of property and materials

- b. Describe the staffing required to manage the property aspects of this project
  - c. For small tools and low value equipment (<\$1000) is this a direct charge requiring the property management or could they possibly be an indirect charge to eliminate some of the property management costs
  - d. Is procurement staff direct or indirect charged?
  - e. Is there small purchase authority at the individual job sites
5. Key Personnel and Hourly Labor Rates by Discipline
- a. Discuss up to what level of the company would direct charging be expected
  - b. What activities are anticipated by these individuals and identify hourly vs. salaried
  - c. When key personnel change, describe the change process
  - d. Government approval is required for key positions
6. Resource Utilization
- a. Discuss the planned usage of personnel that work at multiple, remote locations
  - b. Where is staff going to be located?
  - c. What travel costs, frequency and time are associated with staff that may be located some distance from construction locations?
  - d. Discuss the usage of permanent or temporary staff
  - e. How will teaming partners or major subcontractor staff be assigned over the various locations?
7. Equipment Costs and Procedures
- a. If company-owned equipment/vehicles are proposed for use, describe the rate structure and mobilization/demobilization cost.
  - b. Discuss cost of down time for company-owned and -leased equipment requiring repair/maintenance.
  - c. For rented equipment, when do charges start/stop, i.e., during mobilization/demobilization
  - d. Provide any current DCAA approved equipment rate information
8. Management Information System (MIS)
- a. Discuss what system (equipment, software and personnel) will be used to manage all construction activities
  - b. Provide staffing plan for MIS effort; contract scheduling, cost estimating and cost accounting
9. Phasing Mobilization/Demobilization
10. Contract Closeout
- a. Provide plan to allow for a timely contract closeout
  - b. Provide plan for storage and retrieval of key documents required for audit (hard copy and/or electronic media)
  - c. Documents on electronic media must be available for a period of time until contract closeout as a minimum to complete the contract audit and financial closeout of the contract. Discuss how this will be accomplished.
  - d. Contractor personnel responsible for contract closeout shall be designated in writing and submitted for approval when revisions are required.

- e. Cognizant audit agency and POC at that agency
- 11. Vouchers and Payment
  - a. Discuss voucher package and proposed back-up documents that provide cost detail under cost reimbursement contracting
  - b. Discuss inclusion of voucher information from remote sites
  - c. Prompt Payment Act does not apply to cost reimbursement work
- 12. Claims/Disputes
  - a. Discuss claims management by the prime in response to subcontractor claim
  - c. Dispute resolution
- 13. Method of developing Network Analysis System for project showing activities for sub and prime contractor using Government-approved work breakdown structure. Also keyed to Work Authorization Documents.
- 14. Earned-value Management System
  - a. Frequency of reporting
  - b. Report types; availability; detailed versus summary reports
- 15. Technical Direction
- 16. USACE/Contractor Relationship
- 17. Post-contract Disposition of Property and Equipment
- 18. Public Relations



**ATTACHMENT 3**  
(See Section 00800, paragraph 23.0)

**AWARD FEE PLAN  
FOR  
NATIONAL MISSILE DEFENSE TACTICAL  
CONSTRUCTION CONTRACT  
DACA87-00-R-0001**

**Award Fee Review Board Chairperson** \_\_\_\_\_  
SHELDON JAHN  
COL, USA  
DISTRICT COMMANDER

**APPROVED:**  
**Fee Determining Official:**

\_\_\_\_\_  
WILLIE B. NANCE  
MG, USA  
Program Executive Officer National Missile Defense

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## **AWARD FEE PLAN**

### **1. INTRODUCTION**

This award fee plan will be the basis for the National Missile Defense Joint Program Office evaluation of the Contractor's performance and will be the basis for presenting an assessment of that performance to the Fee Determining Official (FDO). The specific criteria and procedures used to assess Contractor performance and to determine the amount of award fee earned are described herein.

#### Philosophy

The award fee will focus on the Contractor's abilities to meet the NMD program requirements. Stressing the program versus the individual projects assures that the Contractor maintains a parallel strategic plan with the NMD program to meet all cost, schedule, and quality criteria identified within the contract and the design documents. The evaluation factors for the program criteria recognize that the overall completion of every aspect of the NMD program is important. If the Contractor is not successful in any one facility, then the entire NMD program is in jeopardy.

The most critical criterion to evaluate the Contractor is its performance to meet the Program BOD dates. Therefore, the Contractor's schedule and its adherence to its schedule to meet the BOD dates is the most critical Award Fee factor.

The XBR site will have an evaluation period for the first 6 months and then by the stated performance period on the matrix. The first 6 months will focus on the contractor's planning and start up activities. This period is critical to the NMD program as the Contractor establishes its baselines, subcontracts, costing, and scheduling to meet and exceed the contract requirements. Evaluating this period separate from the specific projects provides the Government with the opportunity to assure that the Contractor has completed the necessary planning activities to assure that its management of the facility construction meet the NMD program goals. The first 6 months will determine if the Contractor has established its schedule, cost, and quality systems to meet the program requirements. The evaluations are focused on the specific projects and meeting the BOD dates and quality requirement of the Contract. A listing of how the projects will be grouped for evaluation is listed in section 2.0 (d) below.

It is imperative that the Government actively participates with the Contractor. Without the Government's full participation and support, the Contractor will not be able to meet the critical BOD dates of this Program. It is in the best interest of the Government to help the Contractor achieve 100% of the Award Fee pool, thereby assuring all the Government's requirements are met.

### **2. ORGANIZATION RESPONSIBILITIES**

The award-fee organization consists of: the Fee Determining Official and Award Fee Review Board (AFRB) which consists of a chairperson, the contracting officer, a recorder, other functional area participants, advisor members, and the construction performance monitors. The FDO, AFRB members, and construction performance monitors are listed in Annexes 1 and 2 to this attachment.

a. **Fee Determining Official**. The FDO duties are the responsibility of the Program Executive Officer, National Missile Defense Joint Program Office. The FDO approves the award-fee plan and any significant changes. The FDO will establish an AFRB to assist by making award fee recommendations. The FDO reviews the recommendation(s) of the AFRB, considers all pertinent data, and unilaterally determines the earned-award-fee amount for each evaluation period. The process whereby award fee determinations are normally made is outlined in paragraph 3 below.

b. **Award Fee Review Board**. AFRB members will review construction performance monitors' evaluation of the Contractor's performance, consider all information obtained from pertinent sources, prepare interim performance reports, and arrive at an earned-award-fee recommendation to be presented to the FDO. The AFRB will also recommend changes to this plan. The members of the AFRB are identical to the membership of the Configuration Management Board who are responsible for the life-cycle cost, schedule, and quality control of the facility construction.

c. **Contracting Officer**. The Contracting Officer is the liaison between Contractor and Government personnel.

d. **Integrated Program Office (IPO)** The AFRB Chairperson will designate Construction Performance Monitors for major projects specified below who will perform the initial evaluation of the Contractor's performance. The construction performance monitors will be assigned specific performance evaluation areas and criteria to evaluate. The IPO, through the Contracting Officer, will implement the required award fee contractual actions. The Construction Performance Monitors will be the same individuals who are responsible for Level III changes to the Configuration Management Board. The CMB is responsible for the life-cycle cost, schedule, and quality control of the facility construction.

e. IPO's will be established for each major project. Each award period has a defined start and end date with a focus on meeting specific facility completion BOD's.

**XBR Facility**

1. Planning and Mobilization
2. XBR Radar – Antenna Mount Foundation BOD
3. XBR Radar - Radome Support BOD
4. Other T/TS Facilities
  - Power Plant
  - Fuel Storage Tanks
  - Pump Houses
  - Near Field Antenna
  - Building Renovations

**3. AWARD-FEE PROCESS.** The award fee process consists of the following:

a. Continual performance evaluation by designated construction performance monitors. Informal joint Contractor and CPM monthly evaluations to assure both parties clearly

communicate their evaluation of the monthly performance to meet the specific award fee evaluations.

b. The XBR site will have an evaluation period for the first 6 months and then evaluations will be based on specific BOD milestones for major facilities. The first 6 months will focus on the contractor's planning and start-up activities. The evaluation will cover the Contractor establishing its baselines, subcontracts, costing, and scheduling to meet and exceed the contract requirements. See Annex 2.

c. The evaluations based on BOD dates are focused on the specific projects and meeting the BOD dates, cost, and quality requirement of the Contract. See Annex 6, Award Fee Matrix.

d. An interim evaluation of Contractor performance is required approximately halfway through each evaluation period if the award fee period is more than six months. The AFRB Recorder notifies each AFRB member and CPM 14 (fourteen) calendar days before the midpoint of the evaluation period. CPMs submit their evaluation reports to the AFRB 7 (seven) calendar days after this notification. The AFRB determines the interim evaluation results and notifies the Contractor in writing of the strengths and weaknesses for the current evaluation period. The Contracting Officer may also issue letters at any other time when it is deemed necessary to highlight areas of Government concern.

e. The Contractor's self-evaluation is optional, but recommended. To be considered, self-evaluations must be submitted to the Contracting Officer within five (5) work days after the evaluation period ends. This written assessment of the Contractor's performance throughout the evaluation period may also contain any information that may be reasonably expected to assist in evaluating the Contractor's performance. The Contractor's self-assessment may not exceed 10 (ten) pages.

f. The AFRB Recorder notifies each AFRB member and CPM fourteen (14) calendar days before the end of the evaluation period. Performance Monitor reports are consolidated by the recorder at the end of the evaluation period for presentation to the AFRB. CPMs submit its evaluation reports to the AFRB seven (7) calendar days after the evaluation period ends. The AFRB prepares an evaluation report with recommendations of earned award fee. At the AFRB Chairperson's discretion, the contractor may be offered an opportunity to provide an oral presentation of its self-evaluation of its performance during the evaluation period to the AFRB. If the Chairperson decides to allow the oral presentation, the Contractor will be notified fourteen (14) calendar days before the board meeting date to allow for preparation.

g. The AFRB Chairperson briefs the evaluation report and its recommendation to the FDO. At this time, the Chairperson may also recommend any significant changes to the Award Fee Plan for FDO approval.

h. Within 30 days following the close of the evaluation period, the FDO will provide a written decision to the Contractor that includes the award fee amount and an evaluation on the Contractor's performance in terms of the evaluation criteria. After receiving the award fee determination, the Contractor may request a debriefing from the AFRB Chairperson.

i. The Contracting Officer issues a contract modification within thirty (30) calendar days after the FDO's decision is made authorizing payment of the earned-award-fee amount. If the Contracting Officer does not give specific notice in writing to the Contractor of any change to the performance evaluation criteria prior to the start of a new evaluation period, then the same criteria listed for the preceding period will be used in the following award-fee evaluation period. Any changes to evaluation criteria will be made by revising paragraph 8 of this plan and by notifying the Contractor prior to the beginning of the next period. Award-Fee Plan change procedures are listed under paragraph 4 of this plan.

**4. AWARD-FEE PLAN CHANGE PROCEDURE.** Changes may occur because subsequent evaluation periods will have performance evaluation criteria that require greater or lesser emphasis, or other performance evaluation criteria may surface as the effort becomes clearer or as emphasis shifts. Any changes to performance evaluation criteria and/or percentage weightings will be made by revising paragraph 8 and Annex 4 of this plan. These changes will apply when the Contracting Officer advises the Contractor in writing. Unilateral changes may be made to any aspect of the Award Fee Plan if the Contractor is provided written notification by the Contracting Officer prior to the start of the upcoming evaluation period. Otherwise, subsequent to the commencement of a period, changes may only be made by mutual agreement of the parties.

**5. AWARD FEE REVIEW BOARD.** The Alaska District Corps of Engineers Commander will chair the AFRB (Annex 1). The AFRB will convene at the time, date and place established by the Chairperson, and will consider information submitted by the following sources to make an award fee recommendation to the FDO:

- a. Evaluations submitted by designated construction performance monitors.
- b. Assessments or inputs from other sources as considered appropriate by the AFRB.
- c. Optional written Contractor self-assessment of performance may be submitted to the AFRB Chairperson through the Contracting Officer for each evaluation period under consideration. Self-assessments shall be no more than 10 pages in length and shall be submitted no later than 5 working days following the close of an evaluation period.
- d. Oral presentation of self-assessments, if deemed desirable by the AFRB Chairperson.
- e. The AFRB members, after receiving the presentations of the performance monitor's evaluations and point score recommendations and reviewing all available information as appropriate, shall individually vote on each criteria category by signed ballot (each member shall have only one vote).

**6. TIMELINESS OF EVALUATIONS AND AWARD FEE DETERMINATIONS.** The AFRB will complete its evaluation and make a recommendation to the FDO. Within 30 calendar days following the close of the evaluation period, the FDO will give a written decision to the Contractor that includes the award fee amount and an evaluation of the Contractor's performance in terms of the evaluation criteria. Within 30 calendar days following the FDO's determination, the Contracting Officer will unilaterally modify the contract. Contractor receipt of the

modification will formalize notification of the amount of award fee earned as determined by the FDO.

**7. AWARD FEE ALLOCATION BY EVALUATION PERIOD.** The award fee earned by the Contractor will be determined at the completion of evaluation periods shown below. The percentage and dollars shown corresponding to each period is the maximum amount that can be earned during that particular period. Any unearned portion of award fee for a period may be, at the sole discretion of the FDO, transferable to a subsequent period.

**8. PERFORMANCE CRITERIA CATEGORIES.** The performance evaluation areas will be evaluated using the performance criteria contained in Annex 3. For the evaluation period, the performance evaluation areas with their corresponding percentage weightings are set on the attached matrix.

CPAF Effort (Completion): There will be no base fee available on this contract. The Contractor will earn award fee by achieving a level of effectiveness in accordance with the award fee standards set forth below. Contractor's effort in a particular area rated below the award fee standard of "Satisfactory" shall receive zero award fee dollars (\$0) for that area. (See Annex 5 for sample computation). In addition, if the Contractor's "overall performance" is below 51% the Contractor shall receive zero award fee dollars (\$0) for the award fee period.

<u>Description</u>	<u>Point Score</u>	<u>CPAF</u>
Excellent	91-100	91-100%
Very Good	81-90	81-90%
Good	66-80	66-80%
Satisfactory	51-65	51-65%
Unsatisfactory	1-50	0%

**9. AWARD FEE EVALUATION PROCESS SPECIFIC RESPONSIBILITIES OF AWARD FEE PARTICIPANTS.**

a. **Construction performance monitors:** CPMs from each functional area will maintain a continuous written record of the Contractor's performance in their evaluation area(s) of responsibility (see Annex 2 for functional areas). Monthly, both the Contractor and Government monitors will share their evaluations and discuss the deviations between the parties. Within 5 workdays of the end of each evaluation period, the AFRB Recorder will request that construction performance monitors submit an evaluation report and will rate the Contractor in performance criteria, covering strong and weak performance. The evaluation report is to include a recommended award fee rating.

b. **Award Fee Review Board:** AFRB members will review evaluation reports, consider all information obtained from pertinent sources, and arrive at a fee recommendation to be given to the FDO by the AFRB Chairperson.

c. **Fee Determining Official:** The FDO will review the recommendation of the AFRB, consider all appropriate data, and advise the Contractor and Contracting Officer of the award fee determination.

d. **Recorder:** The Recorder is a non-voting member of the AFRB and is responsible for coordinating the administrative actions required by the construction performance monitors, the AFRB and the FDO. This includes: 1) receipt, processing and distribution of evaluation inputs from all required sources; 2) scheduling and assisting with internal evaluation milestones, such as briefing; and 3) accomplishing other actions required to insure the smooth operation of the award fee process.

**10. INTERIM LETTERS.** Monthly informal evaluations will be provided to the Contractor in conjunction with the Contractor's self-evaluations and will form the basis for the midpoint evaluations. At approximately the midpoint of the evaluation period, if the award fee period is more than six months, the AFRB Chairperson will send an interim letter or letters to the Contracting Officer which address the Contractor's performance with emphasis on areas needing improvement. The Contracting Officer will issue letters at any time when it is deemed necessary to highlight areas for improvement. For each letter issued, the Contractor is required to provide a written response within 30 days. The response should set forth plans for increasing effectiveness in the areas addressed or explain why it is not feasible to do so.

**11. AWARD FEE INTEGRITY.** The award fee process is recognized to be subjective in nature, but every effort will be made to assure fairness. The written records of the construction performance monitors, the inputs from other pertinent sources, and the Contractor's self-assessment and oral presentation (if provided) assist in providing the checks and balances necessary to assure award fee integrity. Disclosure statements must be signed by construction performance monitors and AFRB members.

**12. TERMINATION FOR CONVENIENCE.** In the event the contract is terminated for the convenience of the Government after the start of an award fee period, the award fee deemed earned and to be paid for this period will be determined by the FDO using standard procedures outlined above. The remaining award-fee dollars for all periods subsequent to this termination shall not be considered available or earned and, therefore, shall not be paid.

Annexes:

1. Award Fee Review Board Membership
2. Construction Performance Monitors
3. Grade Definitions
4. Performance Criteria
5. Sample Award Fee Computation



**ANNEX 1**  
**AWARD-FEE REVIEW BOARD MEMBERSHIP**

Award Fee Review Board Chairperson: District Commander

Award Fee Review Board Members:

JPO – SAO Commander

LSI – Boeing Representative (non-voting / advisor)

USACE – USACE Program Manager

SMDC – User Representative (non-voting)

\*Recorder (Non-voting member)

**ANNEX 2**  
**CONSTRUCTION PERFORMANCE MONITORS**

**Area of Evaluation Performance Monitor(s)**

JPO Site Manager

LSI - Site Manager

USACE – Resident Engineer

XBR Project Office representative

### **ANNEX 3**

#### **GRADE DEFINITIONS**

**UNSATISFACTORY PERFORMANCE:** Contractor's performance of a significant number of contract tasks is inadequate and inconsistent. Quality, responsiveness, and timeliness in many areas require attention and action. Corrective actions have not been taken or are ineffective. Overall unsatisfactory performance shall not earn an award fee.

**SATISFACTORY PERFORMANCE:** Contractor's performance of all contract tasks is adequate with some tangible benefits to the Government due to Contractor's effort or initiative. Although there are areas of good or better performance, these are more or less offset by lower-rated performance in other areas.

**GOOD PERFORMANCE:** Contractor's performance of most contract tasks is better than adequate and provides some tangible benefits to the Government in several significant areas. While the remainder of the Contractor's effort meets the contract requirements, areas requiring improvements are more than offset by better performance in other areas.

**VERY GOOD PERFORMANCE:** Contractor's performance of most contract tasks is consistently above standard and provides significant tangible and intangible benefits to the Government (e.g. improved quality, responsiveness, increased timeliness, or generally enhanced effectiveness of operations). Although some areas may require improvement, these areas are minor and are more than offset by better performance in other areas. Few, if any, recurring problems have been noted, and the Contractor takes satisfactory corrective action.

**EXCELLENT PERFORMANCE:** Contractor's performance of virtually all contract tasks is consistently noteworthy and provides numerous significant, tangible or intangible, benefits to the Government. The few areas for improvement are all minor. There are no recurring problems. Contractor's management initiates effective corrective action whenever needed.

## **ANNEX 4**

### **PERFORMANCE CRITERIA**

This annex contains the list of evaluation criteria for the categories of performance.

#### **Performance Category**

**COST CONTROL**

**SCHEDULE CONTROL**

**PERFORMANCE**

**MANAGEMENT**

**SAFETY**

#### **COST CONTROL**

##### **I. UNSATISFACTORY**

- a. Inaccurate cost variance analysis.
- b. Any non-compliance with Limitation of Funds Clause.
- c. Contractor does not control expenditures for direct charges (i.e., services); and/or:
- d. Contractor exceeds baseline cost estimate; and/or:
- e. Does not meet satisfactory criteria under this evaluation category.

##### **II. SATISFACTORY**

- a. Meets the requirements of the contract for this area.
- b. Demonstrates conscientious control of all expenditures.
- c. All cost reports are clear and reconcile to a common data base.
- d. Funds requirements data are projected accurately and clearly and are received in a timely manner.
- e. Contractor recognizes where cost growth may occur and provides timely and well documented justification of actual problems and projections for additional resources.
- f. The Contractor provides accurate cost estimates for tasks and gives timely notices to the Government if it anticipates significant variances.
- g. Contractor insures all proposal data, including subcontractor data, is adequate for technical review and cost analysis.

- h. Changes are suggested in a timely manner to achieve maximum cost savings when implemented.
- i. Cost data is consistent and logical and based on program requirements.
- j. Variations between cost elements and requirements affecting the variation are explained with clarity.

### **III. GOOD**

- a. Meets the requirements of II above, plus:
- b. Adjustments or other perturbations are fully and clearly explained.
- c. All requirements for additional funding are thoroughly documented and justified.
- d. Takes measures to avoid cost growth. Reasonable corrective actions are briefed to the IPO for review.
- e. Cost variances (including subcontractor) are identified early and plans for recovery revised, reported, and implemented.
- f. The Contractor provides accurate cost estimates for tasks and gives timely notices to the Government if it anticipates significant variances.
- g. Expeditiously validates and properly maintains Earned Value Management criteria.

### **IV. VERY GOOD**

- a. Meets the requirements of III above, plus:
- b. Funds requirements reflect constant scrutiny to assure accuracy.
- c. Cost savings are considered and reported in change proposals.
- d. Prepares and develops graphic program cost data which provides clear program office visibility into current and future program costs.
- e. Performs necessary contingency planning and keeps close and timely communication with the program office on cost issues.
- f. Baseline integrity is consistently maintained and all changes are fully documented.
- g. Narratives explaining data variances (cost to completion) are current, accurate, explicit, and relevant to the variances observed and provide consistent indications of program development.

- h. Narratives address anticipated program impacts and fully describes both current and future cost impacts of the current cost performance.
- i. Plans, develops and executes viable procedures that incorporate the flexibility necessary to be responsive to changing priorities without adversely affecting overall sensor cost.
- j. Provides a resource allocation system that is well defined and logically matrixes to program schedule milestones.
- k. Controls costs within resources allocated.

## **V. EXCELLENT**

- a. Meets the requirements of IV above, plus:
- b. Contractor consistently submits high quality cost reports, which permit early identification and resolution of problem areas.
- c. Funds requirements data and projections reported are accurate and received ahead of schedule.
- d. Cost variances are fully explained and resolved without impact to overall program cost goals.
- e. Consistently anticipates possible sources of cost growth and implements corrective action to avoid or resolve potential cost problems.
- f. Proposes innovative and thoroughly cost effective approach to problems with which the IPO agrees.
- g. Maintains a cost management system, which identifies problem areas and implements solutions to maintain cost and manpower growth levels below the negotiated levels.

## **SCHEDULE CONTROL**

### **I. UNSATISFACTORY**

- a. Does not meet the requirements of the contract for this area.
- b. Inaccurate schedule variance analysis
- c. Does not meet schedule milestones.
- d. Contractor does not meet schedule forecast for original work or overall schedule.
- e. Does not meet satisfactory criteria under this evaluation category.

## **II. SATISFACTORY**

- a. Meets the requirements of the contract for this area.
- b. Demonstrates conscientious control of schedule.
- c. All schedule reports are clear and reconcile to a common data base.
- d. Schedule requirements data are projected accurately and clearly and are received in a timely manner.
- e. Contractor recognizes where schedule delays may occur and provides timely and well documented justification of actual problems and projections for additional resources.
- f. The Contractor provides accurate schedule estimates for tasks and gives timely notices to the Government if it anticipates significant variances.
- g. Contractor insures all proposal data, including subcontractor data, is adequate for technical review and schedule analysis.
- h. Changes are suggested in a timely manner to achieve minimum schedule impact when implemented.
- i. Schedule data is consistent and logical and based on the construction contract schedule program requirements.
- j. Variations between schedule elements and requirements affecting the variation are explained with clarity.

## **III. GOOD**

- a. Meets the requirements of II above, plus:
- b. Adjustments or other perturbations are fully and clearly explained.
- c. All requirements for additional time are thoroughly documented and justified.
- d. Takes measures to avoid schedule growth. Reasonable corrective actions are briefed to the IPO for review .
- e. Schedule variances (including subcontractor) are identified early and plans for recovery revised, reported, and implemented.
- f. Expeditiously validates and properly maintains Earned Value Management criteria.

#### **IV. VERY GOOD**

- a. Meets the requirements of III above, plus:
- b. Funds requirements reflect constant scrutiny to assure accuracy.
- c. Schedule savings are considered and reported in change proposals.
- d. Prepares and develops graphic program schedule data which provides clear program office visibility into current and future program schedules.
- e. Performs necessary contingency planning and keeps close and timely communication with the program office on schedule issues.
- f. Baseline integrity is consistently maintained and all changes are fully documented.
- g. Narratives explaining data variances (schedule to completion) are current, accurate, explicit, and relevant to the variances observed and provide consistent indications of program development.
- h. Narratives address anticipated program impacts and fully describes both current and future schedule impacts of the current schedule performance.
- i. Plans, develops and executes viable procedures that incorporate the flexibility necessary to be responsive to changing priorities without adversely affecting overall the construction contract schedule.
- j. Provides a resource allocation system that is well defined and logically matrixes to the construction contract schedule milestones.
- k. Controls schedules within forecasts.

#### **V. EXCELLENT**

- a. Meets the requirements of IV above, plus:
- b. Contractor consistently submits high quality schedule reports which permit early identification and resolution of problem areas.
- c. Schedule requirements data and projections reported are accurate and received ahead of schedule.
- d. Schedule variances are fully explained and resolved without impact to overall program schedule goals.
- e. Consistently anticipates possible sources of schedule growth and implements corrective action to avoid or resolve potential schedule problems.



- f. Proposes innovative and thoroughly schedule effective approach to problems with which the IPO agrees.
- g. Maintains a schedule management system which identifies problem areas and implements solutions to maintain schedule and manpower growth levels below the negotiated levels.

## **MANAGEMENT**

### **I. UNSATISFACTORY**

- a. Does not meet satisfactory criteria under this evaluation category.
- b. Contractor's staff is incomplete, inconsistent, and ineffective in managing the work. Contractor's fails to maintain a stable core workforce (i.e. multiple and repeated hirings, poor billeting facilities, etc.);
- c. Program planning does not contain a logical flow of activities. Program status and visibility into near term actions are not adequate for future planning activities;
- d. Contractor defines problems without factual supporting information and rationale;
- e. Failure to maintain control of subcontract performance and schedule. Subcontractor proposals are not received in a timely manner;. Fails to identify short-comings of subcontractor efforts and does not take corrective action;
- f. Logistic Management execution is not in compliance with FAR and Contractor internal audit processes (i.e. Government Property, Subcontractor consent packages, etc.)

### **II. SATISFACTORY**

- a. Meets the requirements of the contract for this area.
- b. Contractor's staff properly adjusts and responds to project problems to assure project milestones are met but does not initiate enough active management to prevent interim milestone impacts.
- c. Program planning is complete and contains a logical flow of activities. Program status and visibility into near term actions is provided through schedules and status of contract tasks. Ensures the onsite USACE program managers are informed of all upcoming decisions which will potentially impact schedule, technical performance;
- d. Implements management control systems that provide for identification of problems to the appropriate management level. Clearly defines problems with factual supporting information and rationale.
- e. Flows down all applicable contracts requirements to subcontractors and ensures that subcontractor management has effective programs to implement those requirements.
- f. Logistic Management functions are FAR compliant and adequately support the work.

- g. Creatively solves problems.

### **III. GOOD**

- a. Meets the requirements of Satisfactory above, plus:
- b. Provides adequate personnel-loading levels and qualified personnel for program to proceed smoothly. Re-evaluates man-loading and resources to reforecast requirements to meet long range contract re-planning with minimum inefficiency due to re-allocated resources. Constantly evaluates manpower needs to support executing the work. Demonstrates strong leadership through effective internal communications. Inter-organization coordination and planning is used to the maximum;
- c. Program planning is comprehensive and clearly improves the management of the work. Potential short term and long term problems are identified early to assure interim milestones are met;
- d. Plays a key role in identifying issues and recommendations for resolving problem impacts. Work-arounds are incorporated well before critical need dates thereby avoiding unnecessary work and cost or schedule impact to the overall construction contract schedule;
- e. Closely monitors all subcontractor key tasks and activities and ensures subcontractor completion within specification and schedule;
- f. Logistic Management activities are responsive to program needs (i.e. subcontract scopes of work match the USACE/Contractor negotiation agreements, property accountability is timely and accurate, etc.)
- g. Definitized Facility Change Proposals (FCP's) in accordance with CM timeline.

### **IV. VERY GOOD**

- a. Meets the requirements of Good above, plus:
- b. Maintains consistent core staff demonstrated by problem solving, responsiveness, and communicating solutions to problems to enhance meeting program goals;
- c. Demonstrates initiative and foresight in planning for potential problems, analyzing program impact, resolving program problems and instituting prompt corrective actions. Maintains complete and comprehensive discrepancy tracking systems and provides accessibility to the Government. Seeks knowledge regarding pertinent data from every aspect of the program to assist each organization in defining solutions to critical problems;
- d. Accommodates changing schedules and program activities with minimal impact to the overall program. Makes decisions and recommendations which demonstrate a high level of sensitivity to identifying cost avoidance opportunities which could reduce overall program

costs. Anticipates potential program impacts concerning subcontractor activities and incorporates solutions into subcontract efforts well before critical need dates; thereby minimizing work-around activities. Responds effectively to directed program changes, thereby accomplishing procurement actions in a timely basis within the constraints of the Contractor's system and in a cost effective manner;

- e. Provides regular assessments of subcontractor performance, including expected slips/early delivery, anticipates impacts to the program, and enforces mechanisms for avoidance/resolution of future problems. Actively seeks status information from all subcontractors to identify early problem definition and resolution;
- f. Logistic Management execution provides tangible cost, schedule and quality improvements to the execution of the work. Contractor provides comprehensive buy/rent/lease cost & benefit analysis, subcontracts are prepared in advance of the work execution, and processes generally enhance the effectiveness of the work. . Contractor's positive management controls over logistic areas results in early problem resolution and considers life cycle costs.
- g. Exceeded established timelines for definitizing FCP's.

## **V. EXCELLENT**

- a. Meets the requirements of Very Good above, plus:
- b. Contractor's effective and efficient team consists of highly qualified and motivated personnel, with an emphasis on productivity. Team demonstrates strong, open lines of communication. Improvements to the planned program result from high quality communication with onsite USACE program managers focal points with no program impacts attributed to poor communication.
- c. Management demonstrates the highest degrees of foresight into program planning, depth of analysis, accomplishment of tasks, advance identification of problems and problem resolution. Critical milestones are planned as early as possible to provide for maximum program contingency time. Many milestones are met early, to the benefit of the program, with no adverse effect on performance, schedule, cost, or risk;
- d. Demonstrates initiative in planning, analyzing, and assessing the total impact of potential problems. Identifies high-risk/problem areas early, plans alternative/parallel courses of action, and keeps onsite USACE program managers well informed of developments. Life cycle costs are minimized by problem solutions.
- e. Incorporates subcontractor management into contractor's planning and execution to resolve problems prior to affecting subcontractor work. Subcontractors willingly support the prime and other team subcontractors.
- f. Logistic Management execution provides real time analysis showing the best value for services, supplies, and materials. Interrelationships and economies of scale are flexible and

are demonstrated by having equipment, supplies, materials, and labor available when required for all contingencies.

- g. Exceeded established timelines and creatively definitized FCP's.

## **PERFORMANCE**

### **I. UNSATISFACTORY**

- a. Does not meet satisfactory criteria under this evaluation
- b. Contractor fails to establish working relationships with USACE, the Joint Program Office, and the Lead System Integrator; and/or;
- c. Contractor mobilization and response to construction challenges are non-responsive to major schedule milestones. Field actions are incomplete; and/or;
- d. Contractor's plans (Quality Control, Safety, etc.) are not enforced; and/or
- e. Contractor does not have a plan to resolve construction challenges; and/or;
- f. Deficiencies adversely impact the Contractor's ability to complete tasks resulting in project delays, increased costs to the Government, poor construction quality, and/or failure to meet objectives in the Statement of Work (SOW) and/or;
- g. Technical/periodic reports and other deliverable data are not submitted in accordance with the specifications and are in formats not easily understood. Discrepancies are major and require time and effort to correct; and/or;
- h. Change proposals are submitted late, are sometimes unacceptable and the change process does not proceed without adverse impact to estimated cost and schedule.

### **II. SATISFACTORY**

- a. Meets the requirements of the contract for this area.
- b. Contractor establishes working relationships with USACE, the Joint Program Office, and the Lead System Integrator.
- c. Provides basic cooperative communication.
- d. Contractor mobilization and response to construction challenges are responsive to major construction contract schedule milestones but interim milestones may have slipped.
- e. Contractor's lack of performance is demonstrated by incomplete field actions.
- f. Contractor complies with its plans (Quality Control, Safety, etc.)

### **III. GOOD**

- a. Meets the requirements Satisfactory above, plus:
- b. Contractor's cooperative working relationship with USACE, the Joint Program Office, and the Lead System Integrator provides prompt notification and response to project requirements.
- c. Overall construction contract schedule milestones are met and only interim milestones may be affected; and/or.
- d. Contractor properly executes its mobilization plan and has the planning necessary to adequately respond to construction challenges on major and interim schedule milestones; and/or;

### **IV. VERY GOOD**

- a. Meets the requirements of Good above, plus:
- b. Contractor has a strong, demonstrated cooperative working relationship with USACE, the Joint Program Office, and the Lead System Integrator that provides near seamless integration of activities between the Government and the Contractor;
- c. Contractor properly executes its mobilization plan and has the planning necessary to adequately respond to construction challenges on major and interim schedule milestones;

### **V. EXCELLENT**

- a. Meets the requirements of IV above, plus:
- b. Contractor has demonstrated initiative in exercising a cooperative working relationship with USACE, the Joint Program Office, and the Lead System Integrator that provides seamless integration of activities between the Government and the Contractor;
- c. Contractor's mobilization plan has inherent savings in time and cost to the program. Contractor anticipates and recommends solutions to potential construction challenges on major and interim schedule milestones;

### **SAFETY**

#### **I. UNSATISFACTORY**

Does not meet the requirements for this area in the contract;

Does not follow approved safety plan;

Does not enforce approved safety plan;

## **II. SATISFACTORY**

Not applicable; next level: Good

## **III. GOOD**

Adheres to basic requirements of approved safety plan;

Minimal lost time due to major accidents;

Employee safety demonstrated to be a priority for contractor;

## **IV. VERY GOOD**

Not applicable; next level: Excellent

## **V. EXCELLENT**

Meets the standards of “Good” above

Always encouraging feedback as to how to improve safety program

No lost time due to major accidents;

Contractor aggressively pursues safety compliance and innovations.

## ANNEX 5

### SAMPLE COMPUTATION OF AWARD FEE :

**Period Award Fee Pool** **\$1,000,000**

<b>COST CONTROL</b>	<b>10%</b>
<b>SCHEDULE CONTROL</b>	<b>30%</b>
<b>PERFORMANCE</b>	<b>25%</b>
<b>MANAGEMENT</b>	<b>30%</b>
<b>SAFETY</b>	<b>5%</b>

#### **Period Award Fee**

Cost Control	Excellent	$94\% \times 10\% = 9.4\%$	$\$1,000,000 \times 9.4\% = \$ 94,000$
Schedule Control	Excellent	$96\% \times 30\% = 28.8\%$	$\$1,000,000 \times 28.8\% = 288,000$
Performance	Very Good	$88\% \times 25\% = 22\%$	$\$1,000,000 \times 22\% = 220,000$
Management	Excellent	$96\% \times 30\% = 28.8\%$	$\$1,000,000 \times 28.8\% = 288,000$
Safety	Good	$80\% \times 5\% = 3\%$	$\$1,000,000 \times 3\% = \underline{30,000}$

**Total Period Award Fee** **\$920,000**

Overall rating is the total amount earned divided by total pool.  $920/1,000 = 92\% = \text{Excellent}$

## Annex 6

### AWARD FEE MATRIX

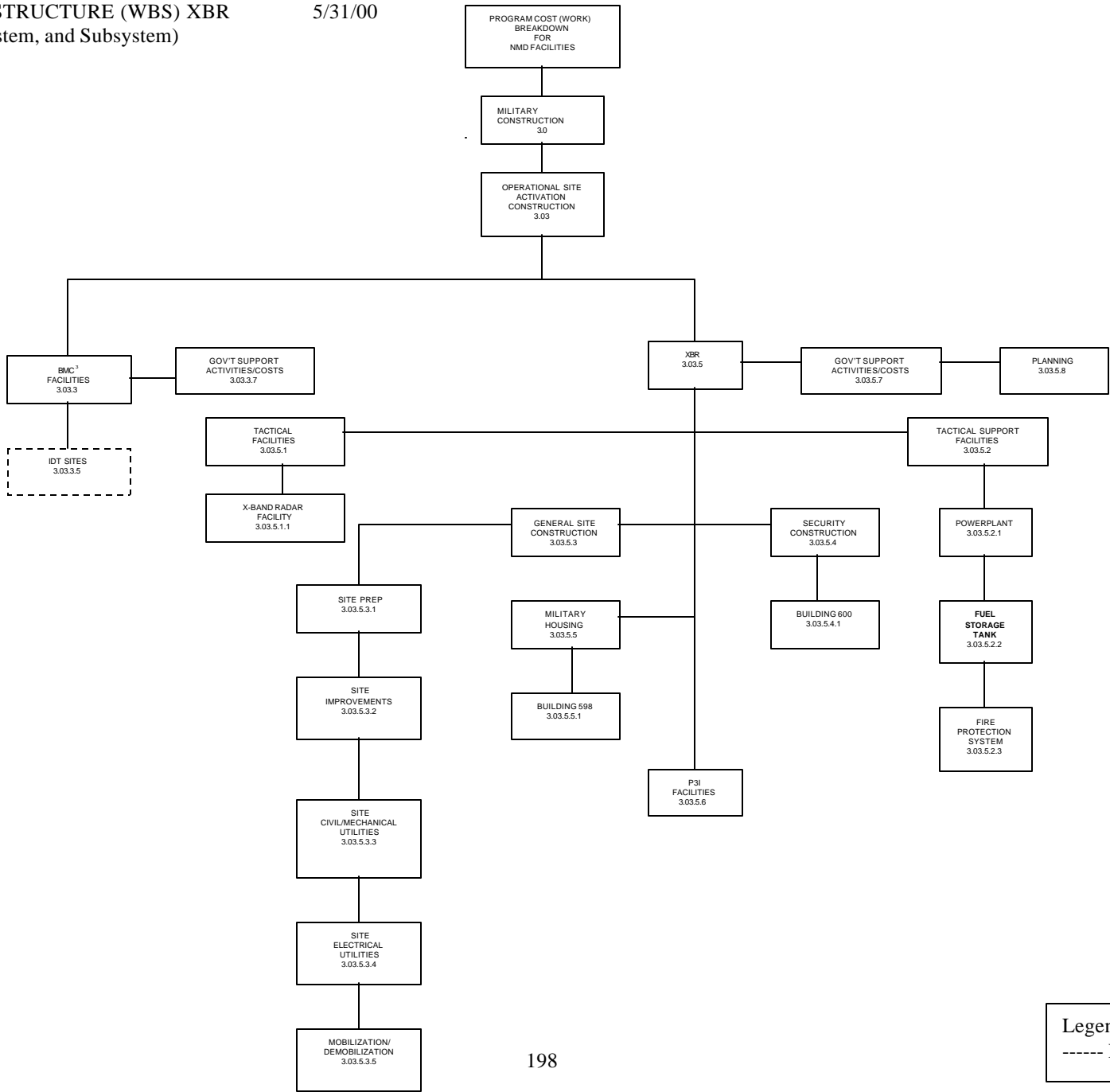
#### X-Band Radar

Period	Significant Activities	Total Award Fee Available	Metric	Value
<b>1<sup>st</sup> 6 Months</b>	Planning	10%	Cost	20%
	Site Development		Schedule	25%
	Cost System		Performance	25%
	Schedule System		Management	25%
	Government Interface		Safety	5%
<b>Major Facilities</b>				
<b>NTP - 4/2/02</b>	BOD Antenna Mount Foundation	30%	Cost	20%
			Schedule	45%
			Performance	15%
			Management	10%
			Safety	10%
<b>NTP - 5/1/03</b>	BOD Radome Support	40%	Cost	25%
			Schedule	40%
			Performance	15%
			Management	10%
			Safety	10%
<b>NTP - 12/1/03</b>	Other Facilities	20%	Cost	20%
			Schedule	35%
			Performance	15%
			Management	20%
			Safety	10%



ATTACHMENT 4 (See Section 00800, paragraph 24.0)  
WORK BREAKDOWN STRUCTURE (WBS) XBR  
Level 4 (Site, Facility, System, and Subsystem)

5/31/00



Legend:  
----- Future

## ATTACHMENT 5

### Backup Sheets for Site/Facility Supplementary Contract Information

<u>OFFER ITEM</u>	<u>CLIN</u>	<u>MANHOURS</u> <u>SUB</u>	<u>PRIME</u>	<u>TOTAL</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>PRIME OR SUB</u> <u>MATERIAL \$</u>	<u>CONST.</u> <u>EQUIP. \$</u>	<u>LABOR \$</u>	<u>SHIPPING \$</u>
<b>Schedule 1: Shemya, Alaska</b>										
X-Band Radar (MCD)	0001AA	0	0	0						
3.03.5.1 Tactical Facilities		0	0	0			\$0	\$0	\$0	\$0
3.03.5.1.1 Radar Operations Facility		0	0	0	1	EA	\$0	\$0	\$0	\$0
Substructure				0						
Superstructure				0						
Exterior Closure				0						
Roofing				0						
Interior Construction				0						
Plumbing				0						
HVAC				0						
Fire Protection Systems				0						
Electrical				0						
Security System				0						
Special Construction (Shielding)				0						
Other Costs				0						
3.03.5.2 Tactical Support Facilities		0	0	0			\$0	\$0	\$0	\$0
3.03.5.2.1 Power Plant		0	0	0	1	EA	\$0	\$0	\$0	\$0
Substructure				0						
Superstructure				0						
Exterior Closure				0						
Roofing				0						
Interior Construction				0						
Plumbing				0						
HVAC				0						
Fire Protection Systems				0						
Electrical				0						
Security System				0						
Special Construction (Shielding)				0						
Other Costs				0						
3.03.5.2.2 Fuel Storage Tank		0	0	0	1	EA	\$0	\$0	\$0	\$0
Substructure				0						
Superstructure				0						
Exterior Closure				0						
Roofing				0						
Interior Construction				0						
Plumbing				0						
HVAC				0						
Fire Protection Systems				0						

Electrical			0							
Security System			0							
Special Construction (Shielding)			0							
Other Costs			0							
3.03.5.2.3 Fire Pump Buildings	0	0	0	2	EA	\$0	\$0	\$0	\$0	\$0
Substructure			0							
Superstructure			0							
Exterior Closure			0							
Roofing			0							
Interior Construction			0							
Plumbing			0							
HVAC			0							
Fire Protection Systems			0							
Electrical			0							
Security System			0							
Special Construction (Shielding)			0							
Other Costs			0							
3.03.5.3 General Site Construction	0	0	0			\$0	\$0	\$0	\$0	\$0
3.03.5.3.1 Site Preparation	0	0	0	1	LS	\$0	\$0	\$0	\$0	\$0
Site Clearing			0							
Site Demolition & Relocation			0							
Site Earthwork			0							
Site Cleanup			0							
Other Site Preparation			0							
3.03.5.3.2 Site Improvements	0	0	0	1	LS	\$0	\$0	\$0	\$0	\$0
Roadways			0							
Parking Lots			0							
Walks, Steps, Ramps, & Terraces			0							
Site Development			0							
Landscaping			0							
Special Construction			0							
Other Site Improvements			0							
3.03.5.3.3 Site Civil/Mechanical Utilities	0	0	0	1	LS	\$0	\$0	\$0	\$0	\$0
Water Supply & Distribution Systems			0							
Sanitary Sewer Systems			0							
Storm Sewer Systems			0							
Heating Distribution Systems			0							
Cooling Distribution Systems			0							
Other Civil/Mech Utilities			0							
3.03.5.3.4 Site Electrical Utilities	0	0	0	1	LS	\$0	\$0	\$0	\$0	\$0
Substations			0							
Exterior Electrical Distribution			0							
Exterior Lighting			0							
Exterior Communication & Alarm			0							
Exterior Security & TV Mon. Systems			0							
Other Electrical Utilities			0							
3.03.5.3.5 Mob/Demob			0		LS					
3.03.5.4 Security Construction	0	0	0			\$0	\$0	\$0	\$0	\$0
3.03.5.4.1 Building 600	0	0	0	1	EA	\$0	\$0	\$0	\$0	\$0

Substructure				0								
Superstructure				0								
Exterior Closure				0								
Roofing				0								
Interior Construction				0								
Plumbing				0								
HVAC				0								
Fire Protection Systems				0								
Electrical				0								
Security System				0								
Special Construction (Shielding)				0								
Other Costs				0								
3.03.5.5 Military Housing	0	0	0	0			\$0	\$0	\$0	\$0	\$0	\$0
3.03.5.5.1 Building 598	0	0	0	0	1	EA	\$0	\$0	\$0	\$0	\$0	\$0
Substructure				0								
Superstructure				0								
Exterior Closure				0								
Roofing				0								
Interior Construction				0								
Plumbing				0								
HVAC				0								
Fire Protection Systems				0								
Electrical				0								
Security System				0								
Special Construction (Shielding)				0								
Other Costs				0								
3.03.5.6 Project Management	0001AB		0			LS						
3.03.5.7 Government Support Activities	0	0	0	0	1	LS	\$0	\$0	\$0	\$0	\$0	\$0
Contractor-Furnished Vehicles				0								
Computer Support				0								
Government Personnel Lodging and Meals				0								
3.03.5.8 Planning	0	0	0	0	1	LS	\$0	\$0	\$0	\$0	\$0	\$0

## ATTACHMENT 6

### Wage Determination

General Decision Number AK000001

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General Decision Number AK000001

Superseded General Decision No. AK990001

State: **Alaska**

Construction Type:

BUILDING

HEAVY

County(ies):

STATEWIDE

Modification Number	Publication Date
0	02/11/2000
1	02/18/2000
2	03/03/2000
3	04/14/2000

COUNTY(ies):

STATEWIDE

ASBE0097A 12/01/1999

	Rates	Fringes
ASBESTOS WORKERS/INSULATORS (includes application of all insulating materials protective coverings, coatings and finishings to all types of mechanical systems)	26.35	4.80

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ASBE0097B 01/05/1995

	Rates	Fringes
HAZARDOUS MATERIAL HANDLER (includes preparation, wetting, stripping, removal scrapping, vacuming, bagging, and disposing of all insulation materials, whether they contain asbestos or not, from mechanical systems)	21.55	6.79

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BOIL0502A 10/01/1999

	Rates	Fringes
BOILERMAKERS	31.45	9.65

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BRAK0001A 07/01/1999

	Rates	Fringes
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BRICKLAYERS, BLOCKLAYERS, STONEMASON, MARBLE MASON, TILE SETTER & TERRAZZO WORKER	27.42	10.30
TILE & TERRAZZO FINISHERS	21.99	10.30
-----		
CARP1243A 07/01/1997		
	Rates	Fringes
NORTH OF THE 63RD PARALLEL		
CARPENTERS/LATHER/DRYWALL APPLICATOR	27.70	10.15
DEWALT OR SIMILAR TYPE SAW OPERATORS; SAW FILERS; NAIL- ING MACHINE OPERATORS; POWER- ACTUATED TOOL OPERATOR; MAR- LITE AND ACOUSTICAL APPLICATOR FLOOR WORKERS; FIRE OR FLOOD REPAIR WORK	28.24	10.15
MILLWRIGHTS	28.60	10.15
-----		
CARP1281A 07/01/1999		
	Rates	Fringes
SOUTH OF 63RD PARALLEL		
CARPENTERS & DRYWALLERS	26.10	10.20
ACOUSTICAL APPLICATOR AND LATHERS	26.10	10.20
MILLWRIGHTS	26.80	10.20
-----		
CARP2520A 07/01/1999		
	Rates	Fringes
DIVERS:		
WORKING	58.80	9.60
STAND-BY	29.40	9.60
TENDER	28.40	9.60
PILEDRIVERS:		
WELDER	27.00	9.60
CARPENTER	26.40	9.60
SHEET PILE STABBER	26.24	9.60
PILEDRIVER; SKIFF OPERATOR AND RIGGER	25.24	9.60
-----		
* ELEC1547A 03/01/2000		
	Rates	Fringes
ELECTRICIANS; TECHNICIANS	27.67	3%+10.85
CABLE SPLICERS	29.42	3%+10.85
-----		

ELEC1547B 01/01/2000		
	Rates	Fringes

LINEMEN; EQUIPMENT OPERATORS;		
TECHNICIAN	32.15	3%+13.00
CABLE SPLICER	33.90	3%+13.00
POWDERMAN	30.15	3%+13.00

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\* ELEV0019A 04/10/2000

	Rates	Fringes
ELEVATOR MECHANICS	33.145	6.935+a

FOOTNOTE: a. Employer contributes 8% of the basic hourly rate for over 5 year's service and 6% of the basic hourly rate for 6 months to 5 years' of service as vacation paid credit. Seven paid holidays: New Year's Day; Memorial Day; Independence Day; Labor Day, Thanksgiving Day; Friday after Thanksgiving and Christmas Day

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ENGI0302A 07/01/1999

	Rates	Fringes
POWER EQUIPMENT OPERATORS:		
GROUP 1	29.72	8.45
GROUP 1A	31.26	8.45
GROUP 2	29.05	8.45
GROUP 3	28.42	8.45
GROUP 4	23.00	8.45

#### POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Asphalt Roller; Back Filler; Barrier Machine (Zipper); Batch Plant Operator: Batch and Mixer over 200 yds.; Beltcrete with power pack and similar conveyors; Bending Machine; Boat Coxwains; Bulldozers; Cableways, Highlines and Cablecars; Cleaning Machine; Coating Machine; Cranes-45 tons and under or 150 foot boom and under (including jib and attachments): (a) Shovels, Backhoes, Draglines, Clamshells; Gradalls-3 yards and under; (b) Hydralifts or Transporters, all track or truck type, (c) Derricks; Crushers; Deck Winches-Double Drum; Ditching or Trenching Machine (16 inch or over); Drilling Machines, core, cable, rotary and exploration; Finishing Machine Operator, concrete paving, Laser Screed, sidewalk, curb and gutter machine; Helicopters; Hover Craft, Flex Craft, Loadmaster, Air Cushion, All Terrain Vehicle, Rollagon, Bargecable, Nodwell Sno Cat; Hydro Ax: Feller Buncher and similar; Loaders: Forklifts with power boom and swing attachment, Overhead and front end, 2 1/2 yards through 5 yards, Loaders with forks or pipe clamps, Loaders, elevating belt type, Euclid and similar types; Mechanics, Bodyman; Micro Tunneling Machine; Mixers: Mobile type w/hoist combination; Motor Patrol Grader; Mucking Machines: Mole, Tunnel Drill, Horizontal/Directional Drill Operator, and/or Shield; Operator on Dredges; Piledriver Engineers, L. B. Foster, Puller or similar Paving Breaker; Power Plant, Turbine Operator, 200 k.w. and over (power plants or combination of power units over 300 k.w.); Sauerman-Bagley; Scrapers-through 40 yards; Sidebooms-under 45 tons; Shot Blast Machine; Spreaders, Blaw

Knox, Cedarapids, Barber Greene, Screed, Slurry Machine; Sub-grader (Gurries, C.M.I. and C.M.I. Roto Mills and similar types); Tack tractor; Truck mounted Concrete Pumps, Conveyor, Creter; Water Kote Machine; Unlicensed off road hauler

GROUP 1A: Cranes-over 45 tons or 150 foot (including jib and attachments): (a) Shovels, backhoes, draglines, clamshells-over 3 yards, (b) Tower cranes; Loaders over 5 yds.; Motor Patrol Grader (finish: when finishing to final graders and/or to hubs, or for asphalt); Power Plants: 1000 k.w. and over; Quad; Sidebooms over 45 tons; Slip Form Paver C.M.I. and similar types; Scrapers over 40 yards

GROUP 2: Batch Plant Operators: Batch and Mixer 200 yds. per hour and under; Boiler-fireman; Cement Hog and Concrete Pump Operator; Conveyors (except as listed in group 1); Hoist on steel erection; Towermobiles and Air Tuggers; Horizontal/Directional Drill Locator; Loaders, Elevating Grader, Dumor and similar; Locomotives: rod and geared engines; Mixers; Screening, Washing Plant; Service Oiler/Service Engineer; Sideboom (cradling rock drill regardless of size); Skidder; Trenching Machine under 16 inches.

GROUP 3: "A" Frame Trucks, Deck Winches: single power drum; Bombardier (tack or tow rig); Boring Machine; Brooms-power; Bump Cutter; Compressor; Farm tractor; Forklift, industrial type; Gin Truck or Winch Truck with poles when used for hoisting; Grade Checker and Stake Hopper; Hoist, Air Tuggers, Elevators; Loaders: (a) Elevating-Athey, Barber Green and similar types  
(b) Forklifts or Lumber Carrier (on construction job site)  
(c) Forklifts with Tower  
(d) Overhead and Front-end, under 2 1/2 yds.  
Locomotives: Dinkey (air, steam, gas and electric) Speeders; Mechanics (light duty); Mixers: Concrete Mixers and Batch 200 yds. per hour and under; Oil, Blower Distribution; Post Hole Diggers, mechanical; Pot Fireman (power agitated); Power Plant, Turbine Operator, under 300 k.w.; Pumps-water; Rig oiler/assistant engineer, over 45 ton, over 3 yards or over 150 foot boom; Roller-other than Plantmix; Saws, concrete; Straightening Machine; Tow Tractor

GROUP 4: Rig Oiler/Assistant Engineer (Advances to Group III if over 45 tons or 3 yards or 150 ft. boom); Swamper (on trenching machines or shovel type equipment); Spotter; Steam Cleaner

FOOTNOTE: Groups 1-4 receive 10% premium while performing tunnel or underground work.

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IRON0751A 08/01/1999

Rates

Fringes

IRONWORKERS:

BRIDGE, STRUCTURAL,  
ORNAMENTAL, REINFORCING  
MACHINERY MOVER, RIGGER,  
SHEETER, STAGE RIGGER,



BENDER OPERATOR	25.25	11.85
GUARDRAIL LAYOUT MAN	22.49	11.60
FENCE, BARRIER AND GUARDRAIL INSTALLERS	21.75	11.60
HELICOPTER, TOWER	26.25	11.85

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LABO0341A 07/01/1999

	Rates	Fringes
LABORERS:		
GROUP 1	24.35	8.24
GROUP 2	25.10	8.24
GROUP 3	25.75	8.24
Group 4	16.70	8.24

#### LABORERS CLASSIFICATIONS

GROUP 1: Asphalt Workers (shovelman, plant crew); Brush

Cutters; Camp Maintenance Laborer; Carpenter Tenders; Choke Setters, Hook Tender, Rigger, Signalman; Concrete Laborer (curb and gutter, chute handler, grouting, curing, screeding); Crusher Plant Laborer; Demolition Laborer; Ditch Diggers; Dump Man; Environmental Laborer (asbestos (limited to nonmechanical systems), hazardous and toxic waste, oil spill); Fence Installer; Fire Watch Laborer; Flagman; Form Strippers; General Laborer; Guardrail Laborer, Bridge Rail Installers; Hydro-Seeder Nozzleman; Laborers (building); Landscape or Planter; Material Handlers; Pneumatic or Power Tools; Portable or Chemical Toilet Serviceman; Pump Man or Mixer Man; Railroad Track Laborer; Sandblast, Pot Tender; Saw Tenders; Scaffold Building and Erecting; Slurry Work; Stake Hopper; Steam Point or Water Jet Operator; Steam Cleaner Operator; Tank Cleaning; Utiliwalk and Utilidor Laborer; Watchman (construction projects); Window Cleaner

GROUP 2: Burning and Cutting Torch; Cement or Lime Dumper or Handler (sack or bulk); Chainsaw Operator (filer); Choker Splicer; Chucktender (wagon, airtrack and hydraulic drills); Concrete Laborers (power buggy, concrete saws, pumpcrete nozzle, vibrator man); Environmental Laborer (marine work); Foam Gun or Foam Machine Operator; Green Cutter (dam work); Guardrail Machine Operator; Gunnite Operator; Hod Carriers; Jackhammer or Pavement Breakers (more than 45 pounds); Mason Tender and Mud Mixer (sewer work); Pipelayers, Pipe Builder, Plastic Welding; Plasterer, Bricklayer and Cement Finisher Tenders; Power Saw Operator; Railroad Switch Layout Laborer; Sandblaster; Sewer Caulkers; Sewer Plant Maintenance Man; Thermal Plastic Applicator; Timber Faller, Chain Saw Operator; Timberman

GROUP 3: Asphalt Raker, Asphalt Belly dump lay down; Bit Grinder, Drill Doctor (in the field); Drillers (including, but not limited to, wagon drills, air-track drills, hydraulic drills); Graderman (setting or transferring of grade marks); High Rigger and Tree Topper; High Scaler; Pioneer Drilling and

Drilling Off Tugger (all type drills); Powderman; Slurry Seal  
Squeegee Man; Arc Welding (in connection with laborers work)

GROUP 4: Final Building Cleanup

TUNNELS, SHAFTS, AND RAISES

GROUP 1	26.75	8.24
GROUP 2	27.57	8.24
GROUP 3	28.29	8.24

TUNNELS, SHAFTS, AND RAISES CLASSIFICATIONS

GROUP 1: Brakeman; Muckers; Nippers; Topman and Bull Gang;  
Tunnel Track Laborer

GROUP 2: Burning and Cutting Torch; Concrete Laborers;  
Jackhammers; Laser Instrument Operators; Nozzleman, Pumpcrete or  
Shotcrete; Pipelayers.

GROUP 3: Miner; Miner/powerman; Retimberman

Tunnel shaft and raise rates only apply to workers regularly  
employed inside a tunnel portal or shaft collar.

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PAIN1140C 07/01/1999	Rates	Fringes
SOUTH OF THE 63RD PARALLEL		
PAINTERS		
Brush, Roller, Sign	22.30	7.05
Paper and Vinyl, Swing		
Stage, Taper/Drywall,		
Structural Steel	22.70	7.05
Spray-Sand/Blast, Epoxy		
and Tar Applicator	23.30	7.05
Steeple Jack & Tower	24.30	7.05

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PAIN1140E 09/01/1999	Rates	Fringes
SOFT FLOOR LAYERS	23.48	6.00

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PAIN1140F 06/01/1999	Rates	Fringes
SOUTH OF THE 63RD PARALLEL		
GLAZIERS	23.40	8.50

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* PAIN1555C 04/01/2000	Rates	Fringes
NORTH OF THE 63RD PARALLEL		

PAINTERS:  
BRUSH, BUFFER OPERATOR, FLOOR-

COVERER, POT TENDER, ROLL SPRAY, WALLCOVERER	25.50	8.30
HAZARDOUS MATERIAL APPLICATOR, LEAD BASED PAINT ABATEMENT, RADON MITIGATION, SANDBLAST, STRUCTURAL STEEL, TAPING, TEXTURING	26.00	8.30
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PAIN1555E 08/01/1999		
	Rates	Fringes
NORTH OF THE 63RD PARALLEL		
GLAZIERS	25.87	6.55
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PLAS0867A 02/01/2000		
	Rates	Fringes
NORTH OF THE 63RD PARALLEL:		
CEMENT MASONS	28.10	8.48
PLASTERERS	29.58	8.48
SOUTH OF THE 63RD PARALLEL		
CEMENT MASONS	27.85	8.48
PLASTERERS	29.33	8.48
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PLUM0262C 01/01/2000		
	Rates	Fringes
East of the 141st Meridian		
PLUMBERS; STEAMFITTERS	28.09	9.00
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PLUM0367B 07/01/1999		
	Rates	Fringes
South of the 63rd Parallel		
PLUMBERS; STEAMFITTERS	27.95	8.85
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PLUM0375A 07/01/1999		
	Rates	Fringes
North of the 63rd Parallel		
PLUMBERS; STEAMFITTERS	31.22	10.55
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PLUM0669A 01/01/2000		
	Rates	Fringes
SPRINKLER FITTER	35.05	6.45
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ROOF0190A 03/01/1998		

	Rates	Fringes
NORTH OF THE 63RD PARALLEL: ROOFERS	28.60	7.50
SOUTH OF THE 63RD PARALLEL ROOFERS	27.60	7.50
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SHEE0023A 08/30/1998		
	Rates	Fringes
South of the 63rd Parallel: SHEET METAL WORKERS	28.81	8.03
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SHEE0023B 07/01/1998		
	Rates	Fringes
North of the 63rd Parallel: SHEET METAL WORKERS	30.40	8.89
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TEAM0959A 09/01/1999		
	Rates	Fringes
TRUCK DRIVERS:		
GROUP 1	29.20	8.85
GROUP 1A	30.25	8.85
GROUP 2	28.15	8.85
GROUP 3	27.47	8.85
GROUP 4	27.00	8.85
GROUP 5	26.36	8.85
<p>GROUP 1: Semi with Double Box Mixer; Dump Trucks (including rockbuggy and trucks with pups) over 40 yards up to and including 60 yards; Deltas, Commanders, Rollogans and similar equipment when pulling sleds, trailers or similar equipment; Boat Coxswain; Lowboys including attached trailers and jeeps, up to and including 12 axles; Ready-mix over 12 yards up to and including 15 yards)</p> <p>GROUP 1A: Dump Trucks (including Rockbuggy and Trucks with pups) over 60 yards up to and including 100 yards</p> <p>GROUP 2: Turn-O-Wagon or DW-10 not self-loading; All Deltas, Commanders, Rollogans, and similar equipment; Mechanics; Tireman, heavy duty; Dump Trucks (including Rockbuggy and Trucks with pups) over 20 yards up to and including 40 yards; Lowboys including attached trailers and jeeps up to and including 8 axles; Super vac truck/cacasco truck/heat stress truck; Ready-mix over 7 yards up to and including 12 yards</p> <p>GROUP 3: Dump Trucks (including Rockbuggy and Trucks with pups) over 10 yards up to and including 20 yards; Ready mix/batch trucks 8 yards and up; Oil distributor drivers; Greaser; Water Wagon (when pulled by Euclid or similar type equipment); Partsman</p> <p>GROUP 4: Buggymobile; Semi or Truck and trailer; Dumpster;</p>		

Tireman (light duty); Dump Trucks (including Rockbuggy and Truck with pups) up to and including 10 yards; Track Truck Equipment; Stringing Truck; Fuel Truck; Fuel Handler with truck; Grease Truck; Flat Beds, dual rear axle; Hyster Operators (handling bulk aggregate); Lumber Carrier; Water Wagon, semi; Water Wagon, dual axle; Gin Pole Truck, Winch Truck, Wrecker, Truck Mounted "A" Frame manufactured rating over 5 tons; Bull Lifts and Fork Lifts with Power Boom and Swing attachments, over 5 tons; Front End Loader with Forks; Bus Operator over 30 passengers; All Terrain Vehicles; Boom Truck/Knuckle Truck over 5 tons; Foam Distributor Truck/dual axle; Hydro-seeders, dual axle; Vacuum Trucks, Truck Vacuum Sweepers; Vacuum Trucks, Truck Vacuum Sweepers; Loadmaster (air and water); Air Cushion or similar type vehicle; Fire Truck; Combination Truck-fuel and grease; Compactor (when pulled by rubber tired equipment); Rigger (air/water/oilfield); Ready Mix, up to and including 7 yards

GROUP 5: Gravel Spreader Box Operator on Truck; Flat Beds,

single rear axle; Boom Truck/Knuckle Truck up to and including 5 tons; Pickups (Pilot Cars and all light duty vehicles); Water Wagon, single axle; Gin Pole Truck, Winch Truck, Wrecker, Truck Mounted "A" Frame, manufactured rating 5 tons and under; Bull Lifts and Fork Lifts (fork lifts with power broom and swing attachments up to and including 5 tons); Buffer Truck; Tack Truck; Bus Operators (up to 30 passengers); Farm type Rubber Tired Tractor (when material handling or pulling wagons on a construction project); Foam Distributor, single axle; Hydro-Seeders, single axle; Team Drivers (horses, mules and similar equipment); Rigger (warehouse operation); Fuel Handler (station/bulk attendant); Batch Truck, up to and including 7 yards

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WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.  
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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).  
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In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a

position on a wage determination matter  
\* a conformance (additional classification and rate)  
ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal

process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

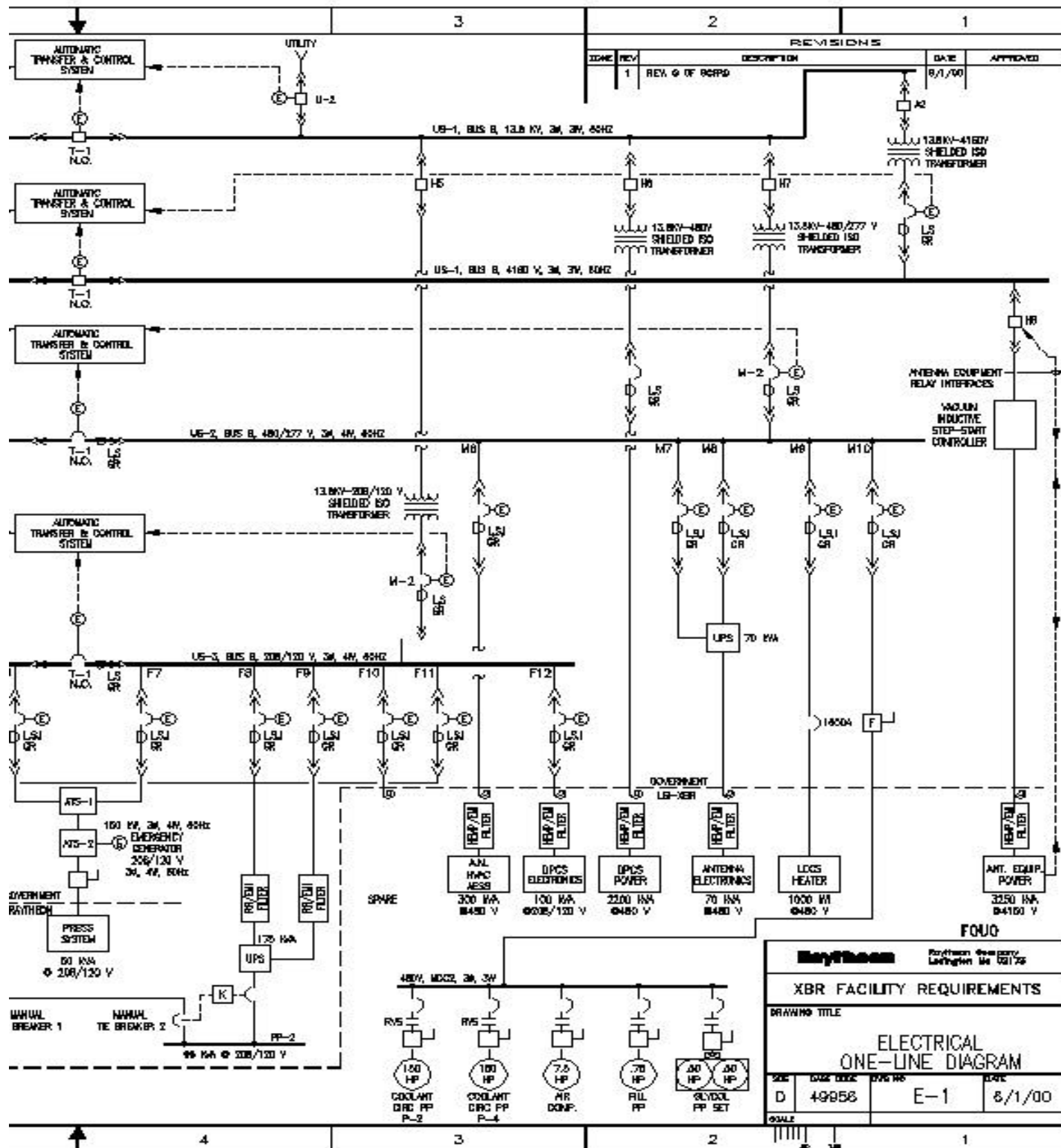
The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

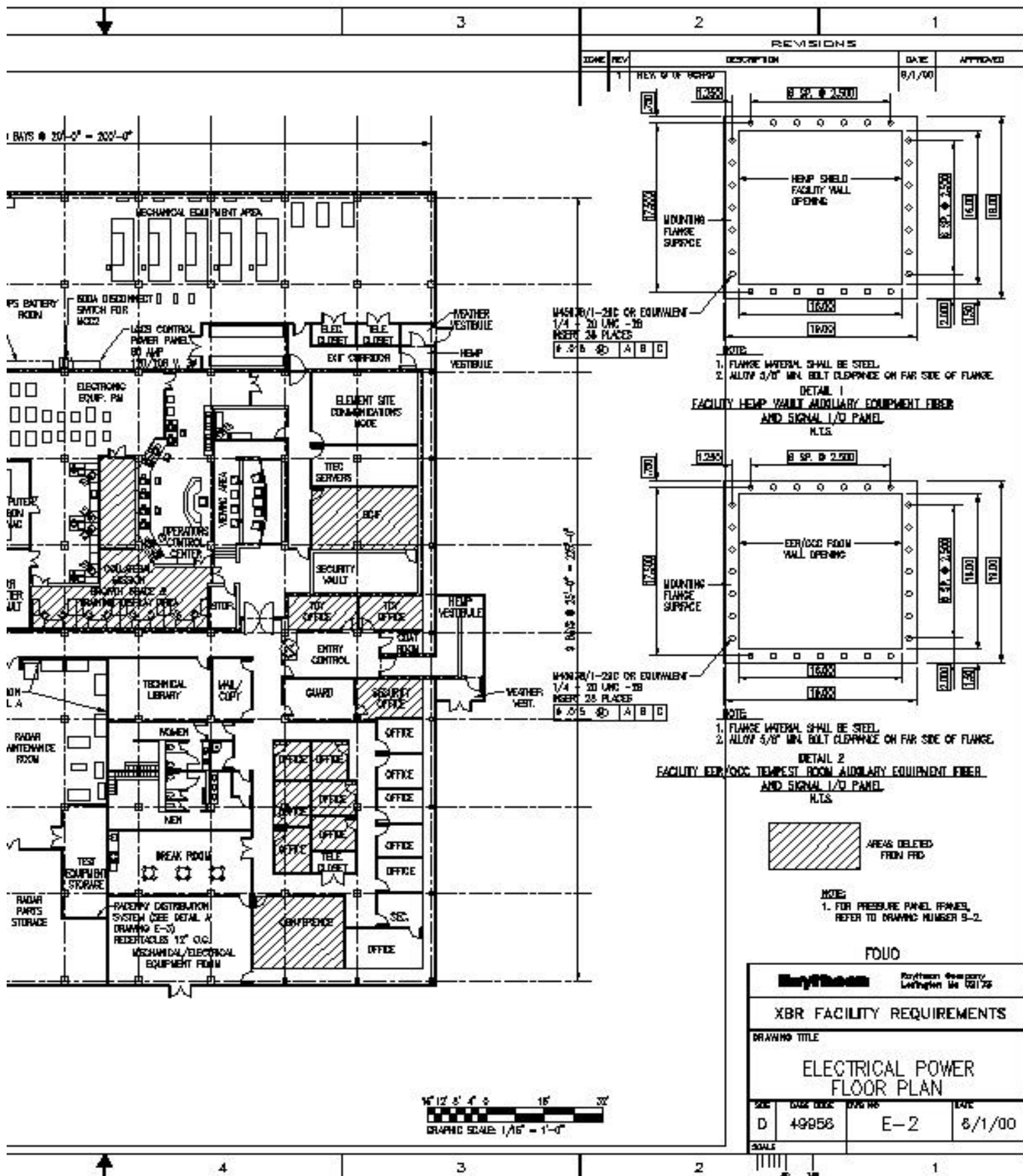
3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

4.) All decisions by the Administrative Review Board are final.  
END OF GENERAL DECISION

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<b>Raytheon</b>		Raytheon Company Lexington MA 02176	
XBR FACILITY REQUIREMENTS			
DRAWING TITLE			
ELECTRICAL POWER FLOOR PLAN			
SIZE	DATE	BY	DATE
D	49958	E-2	8/1/00
SCALE			





Page: 7

[SFM1]CT: review use of shall vs will in this para.

Page: 12

[sfm2]CT: Is this format different from para 4.2.1.1?

Page: 25

[sfm3] CT: Verify reference

Page: 37

[sfm4]CT: what agency? NMD?